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No. 462

No. 15217

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United States
Court of Appeals
for the Ninth Circuit

BRANKO KARADZOLE, Consul General of the Federal People's Republic of Yugoslavia, and ROBERT W. WARE, United States Marshal,

Appellants,

vs.

ANDRIJA ARTUKOVIC,

Appellee.

Transcript of Record
In Two Volumes

Volume I
(Pages 1 to 402)

Appeal from the United States District Court for the Southern District of California, Central Division.

No. 15217

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Court of Appeals
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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

PAGE

Amended Complaint on Extradition 405

Ex. A—Indictment 463

B—Decision 524

Amended Petition for Writ of Habeas Corpus. 22

Appeal:

Application and Order for Use of Original Exhibit DG-H on 393

Certificate of Clerk of Record on 97, 543

Certificate of Clerk to Supplemental Record on 100

Certificate of Clerk to Second Supplemental Record on 400

Designation of Record on (DC) 96

Designation of Record on (Appellant Rafo Ivancevic—USCA) 391

Designation of Record on (Appellant James J. Boyle—USCA) 397

Notice of (Rafo Ivancevic) 94

Notice of (Respondent James J. Boyle—USCA) 99

INDEX PAGE

Appeal—(Continued):

Notice of (Robert W. Ware and Branko Karadzole) 542

Statement of Points on (DC) 95

Statement of Points on (Appellant James J. Boyle—USCA) 396

Statement of Points on (Appellant Rafo Ivancevic—USCA) 390

Statement of Points on (Appellants Robert O. Ware and Branko Karadzole—USCA) 548

Stipulation and Order Extending Time to Docket 542

Substitution of Attorney on (USCA) 399

Supplemental Designation of Record on (Rafo Ivancevic—USCA) 395

Supplemental Designation on (USDC) 99

Appearance of Rafo Ivancevic, Consul General, etc. 19

Application and Order for Use of Original Exhibit DG-H in Lieu of Printing (USCA) 393

Certificate of Clerk to Transcript of Record on Appeal 97, 543

Second Supplemental 400

Supplemental 100

INDEX PAGE

Designation of Contents of Record on Appeal:
Demanding Government (DC) 96
Appellant James J. Boyle (USCA)..... 397
Appellant Rafo Ivancevic (USCA)..... 391
Supplemental, Appellant Rafo Ivancevic (USCA) 395
Supplemental, Demanding Government (USDC) 99

Mandate, Cause No. 13,552..... 532

Memorandum Opinion 35

Minutes of the Court:
September 17, 1951—Hearing on Order to Show Cause Why Writ of Habeas Should Not Issue 25
September 19, 1951—Further Hearing.... 26
October 8, 1951—Further Hearing..... 28
October 22, 1951—Further Hearing..... 29
November 5, 1951—Further Hearing..... 30
January 14, 1952—Further Hearing..... 31
February 18, 1952—Further Hearing..... 32
April 7, 1952—Further Hearing 33
May 12, 1952—Further Hearing..... 34
June 9, 1952—Further Hearing..... 35
December 1, 1954—Re Mandate..... 531

INDEX PAGE

Minutes of the Court—(Continued):
December 13, 1954—Re Opening Brief, Answer of, etc. 535
May 28, 1956—Re Bond of Plaintiff 541
Names and Addresses of Attorneys 1, 403
Notice of Appeal by Rafo Ivancevic 94
Notice of Appeal by Respondent James J. Boyle 99
Notice of Appeal by Robert W. Ware and Branko Karadzole 542
Opinion Memorandum 35
Order Fixing Bond 536
Order Granting Petition for Writ of Habeas Corpus, Release of Petitioner and Release on Bail Pending Appeal 92
Order of Issuance of Writ of Habeas Corpus .. 537
Order to Show Cause Why Writ of Habeas Corpus Should Not Issue 13
Order Substituting Branko Karadzole, Consul General, etc., as Successor to Rafo Ivancevic 530
Petition for Writ of Habeas Corpus 3
Amended 22
Return to Order to Show Cause 14
Second Supplemental Transcript of Record ... 399

Statement of Points on Appeal:
Demanding Government (USDC) 95
Appellant Rafo Ivancevic (USCA) 390
Appellant James J. Boyle (USCA) 396
Appellants Robert O. Ware and Branko Karadzole (USCA) 548
Stipulation and Order Extending Time to Docket Appeal 542
Stipulation for Substitution of Party Appellant, Cause No. 13,552 527
Order for Substitution 529
Substitution of Attorney for Respondent James J. Boyle 399
Supplemental Designation of Record:
Appellant Rafo Ivancevic (USCA) 395
Demanding Government (USDC) 99
Supplemental Transcript of Record 99
Transcript of Hearing for Writ of Habeas Corpus 101
Exhibits for Demanding Government:
B—Telegram Dated September 19, 1951, Ambassador Popovic to Ronald Walker 265
E—Certified Copy of Treaty Between USA and Serbia Respecting Mutual Extradition of Fugitives from Justice, Signed at Belgrade, October 25, 1901 362

INDEX PAGE

Exhibits for Demanding Government—(Continued):

F—Statement Dated September 28, 1951, Signed by Vladimir Popovic 372

DG-H—Amended Complaint on Extradition and Attached Indictment and Decision 405

Exhibit for Petitioner:

15-A—Translation from the Official Gazette of the EPRY No. 86, of October 25, 1946, Item 605 339

Memorandum Opinion 289

Witnesses:

Artukovic, Andrija
—by the Court 174
—by Mr. Reynolds 190

Artukovich, John A.
—direct 227

Drezga, Tihomil
—direct 334

Matic, Marius
—direct 246

Ross, Reverend Robert
—direct 236

Vitelli, Vincent F.
—(Interpreter) 332

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* Page numbering appearing at foot of page of original certified Transcript of Record.

In The United States District Court
For the Southern District of California
Central Division

No. 13467-PH

ANDRIJA ARTUKOVIC,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

PETITION FOR WRIT OF HABEAS CORPUS

To the Judges of the United States District Court for the Southern District of California:

Andrija Artukovic, the petitioner above named, hereby petitions this Honorable Court for a writ of habeaus corpus directing the respondent, James J. Boyle, the United States Marshal for the Southern District of California, in whose custody the petitioner is now restrained of his liberty, to produce the body of your petitioner, Andrija Artukovic, before this Court at a time and place to be specified and then and there to show cause why petitioner should not be released from the custody of the respondent, upon bail in such reasonable sum as may be determined by this Court, and in support thereof your petitioner alleges as follows:

I.

That on August 29, 1951, your petitioner was arrested at his place of employment in the County of

Los Angeles, State of California, upon a warrant of arrest issued August 29, 1951, by Howard V. Calverley, United States [2] Commissioner for the Southern District of California, pursuant to a complaint filed by the Government of Yugoslavia. A true copy of the complaint is attached hereto and marked Exhibit A.

II.

Following his arrest as aforesaid your petitioner, on August 29, 1951, appeared before the United States Commissioner and by said Commissioner was ordered to be held in custody of the respondent herein, without bail. By virtue of such order, your petitioner is now confined in the County Jail of the County of Los Angeles in the custody of respondent.

III.

Upon motion duly made before the United States Commissioner on September 10, 1951, the petitioner's request for release on bail was denied and your petitioner remains in the County Jail of Los Angeles and in the custody of the respondent.

IV.

The circumstances upon which the petitioner relies for release on bail are as follows:

Petitioner is held in custody pending an extradition hearing to determine whether he be returned to the Government of Yugoslavia. He is held on a complaint filed by that Government with the United States Commissioner, which complaint accuses the petitioner of committing the crime of murder dur-

ing the war period in Yugoslavia. The complaint does not contain any supporting facts or any evidence to indicate that the petitioner committed the alleged offenses. There are no facts submitted by the complaint to presume the defendant guilty of the offense alleged. The complaint is bare of surrounding facts or surrounding reports or evidence or documents of any nature upon which the presumption of guilt is great.

It can reasonably be presumed that the charges of the Communist Yugoslavian Government are fictitious and not [3] substantiated, as no action has been taken on the offenses alleged to have been committed since 1941 and 1942, and this procedure was conceived only as a method of returning Andrija Artukovic for trial and punishment in the Communist dominated courts of Yugoslavia and the elimination from the freedom of democracies of an advocate with personal knowledge of the Communist atrocities inside the Government of Yugoslavia.

That the petitioner is on bond returnable to the United States Immigration and Naturalization Service, pending a hearing and clarification of his status, and that the State Department of the United States advised the Yugoslavian Government not to proceed with action against the petitioner until his status before the Immigration and Naturalization Service could be determined.

That by order of the United States Commissioner, the Yugoslavian Government is granted until October 22, 1951, to submit its facts or evidence of

the charges alleged in complaint, and that after that date an extradition hearing will be granted. Considering the distance of travel for witnesses, the difficulty of securing accurate information from the Communist country, the time for hearing is indefinite and will be of long duration.

That the petitioner has been in the United States continuously and within the jurisdiction of this Court since July, 1948; that he lives with his wife and four small children, all of whom are financially dependent upon him for their livelihood.

V.

Petitioner hereby states and represents to this Court that he intends in good faith to remain, and that he will remain, within the jurisdiction of this Court at all times throughout the prosecution of the proceedings, pursuant [4] to the said warrant of arrest, and that he does not intend to and will not at any time during this proceeding leave the jurisdiction of this Court without the approval of the Court. Your petitioner believes that he is not guilty of the offenses charged in the said complaint, and that upon a trial thereof he will be entitled to a verdict of not guilty.

VI.

No preliminary hearing was held on the complaint and all proceedings have been continued until October 22, 1951, at which time another date will be set for the extradition hearing, which date can be at a period six months or more from the date just referred to.

VII.

By virtue of the facts and the circumstances hereinabove set forth, the petitioner is unlawfully imprisoned and restrained of his liberty and such imprisonment and detention are illegal, arbitrary and a denial of rights provided for by the Constitution of the United States.

Wherefore, petitioner prays that a writ of habeas corpus may issue directing James J. Boyle, United States Marshal for the Southern District of California, Central Division, and to any other peace officer having custody of the body of your petitioner, commanding him to have the body of your petitioner, Andrija Artukovic, produced before this Court at a time and place specified, and that this Honorable Court order and direct the petitioner to be released from such custody forthwith, upon such reasonable bail as this Court may determine in the premises.

Dated: September 11, 1951.

/s/ ANDRIJA ARTUKOVIC,
Petitioner.
O'CONNOR & O'CONNOR,
/s/ By EDWARD J. O'CONNOR
Attorney for Petitioner. [5]

EXHIBIT "A"

In the District Court of the United States, Southern District of California, Central Division

In the Matter of the Extradition of ANDRIJA ARTUKOVIC, alias Alois Anich, a fugitive from the justice of the Federal Peoples Republic of Yugoslavia.

COMPLAINT

18 U.S.C. Secion 2184 Extradition Treaty with Servia of May 17, 1902.

The Honorable United States Commissioner for the Southern District of California:

Your Complainant, Rafo Ivancevic, Consul General of the Federal Peoples Republic of Yugoslavia, under oath, deposes and says:

First Count

I.

That in the above entitled matter complainant acts for and in behalf of the Government of the Federal Peoples Republic of Yugoslavia.

II.

That he is informed through Yugoslavian consuler channels that Andrija Artukovic, alias Alois Anich, is duly and legally charged in the Federal Peoples Republic of Yugoslavia with having murdered and caused to be murdered on or about January 26, 1942 [9] at Jasenovac, Peter Zimonic, the Archbishop of Sarajevo; and a warrant has been issued for the fugitive's arrest.

III.

That Andrija Artukovic, alias Alois Anich, is within the Southern District of California.

IV.

That said crime of murder, which said Andrija Artukovic, alias Alois Anich, is charged with having committed in the Federal Peoples Republic of Yugoslavia is an offense for which extradition will lie, as enumerated in Article II of the Extradition Treaty proclaimed May 17, 1902 between the Kingdom of Servia and the United States of America, which said treaty is presently in force between the United States and the Federal Peoples Republic of Yugoslavia.

V.

That through consular channels complainant is informed and believes the requisition for the herein named Andrija Artukovic is about to be made, accompanied by formal documents upon which demand for extradition is founded.

Second Count

I.

That in the above entitled matter complainant acts for and in behalf of the Government of the Federal Peoples Republic of Yugoslavia.

II.

That he is informed through Yugoslavian consular channels that Andrija Artukovic, alias Alois Anich, is duly and legally charged in the Federal

Peoples Republic of Yugoslavia with having murdered and caused to be murdered on or about August 1, 1941 at the village Prebilovci, district of Capljina, the following persons: Bozica Bulat, age 37 years; Vasilije Bulat, [10] age 11 years; Milena Bulat, age 14 years; Mara Bulat, age 19 years; Draginja Bulat, age 5 months; Djurdjia Bulat, age 65 years; Bajo Medic with new-born child, and a warrant has been issued for the fugitive's arrest.

III.

That Andrija Artukovic, alias Alois Anich, is within the Southern District of California.

IV.

That said crime of murder, which said Andrija Artukovic, alias Alois Anich, is charged with having committed in the Federal Peoples Republic of Yugoslavia is an offense for which extradition will lie, as enumerated in Article II of the Extradition Treaty proclaimed May 17, 1902 between the Kingdom of Servia and the United States of America, which said treaty is presently in force between the United States and the Federal Peoples Republic of Yugoslavia.

V.

That through consular channels complainant is informed and believes that requisition for the herein named Andrija Artukovic is about to be made, accompanied by formal documents upon which demand for extradition is founded.

Third Count

I.

That in the above entitled matter complainant acts for and in behalf of the Government of the Federal Peoples Republic of Yugoslavia.

II.

That he is informed through Yugoslavian consular channels that Andrija Artukovic, alias Alois Anich, is duly and legally charged in the Federal Peoples Republic of Yugoslavia with having murdered and caused to be murdered on or about July 15, 1941, close to Tenj, district Osijek, the following [11] persons: Ivanka Nikolic, age 8 years; Jovo Nikolic, age 6 years; Dusan Nikolic, age 4 years; Peter Nikolic, age 88 years; Ljuba Nikolic, age 74 years; Nada Nikolic, new born baby; Krsto Nikolic, age 7 years; Savo Nikolic, age 3 years; Soka Nikolic, age 60 years; Mara Zlatarevic, age 65 years, Bozica Zlatarevic, age 4 years; Danica Zlatarevic, age 12 years; Stevo Zlatarevic, age 13 years and Sofija Zlatarevic, age 14 years, and a warrant has been issued for the fugitive's arrest.

III.

That Andrija Artukovic, alias Alois Anich, is within the Southern District of California.

IV.

That said crime of murder, which said Andrija Artukovic, alias Alois Anich, is charged with having committed in the Federal Peoples Republic of Yu-

goslavia is an offense for which extradition will lie, as enumerated in Article II of the Extradition Treaty proclaimed May 17, 1902 between the Kingdom of Servia and the United States of America, which said treaty is presently in force between the United States and the Federal Peoples Republic of Yugoslavia.

V.

That through consular channels complainant is informed and believes that requisition for the herein named Andrija Artukovic is about to be made, accompanied by formal documents upon which demand for extradition is founded.

Wherefore, your petitioner, acting under the authority and in the behalf stated, prays the consideration of this petition and that a warrant may issue for the arrest of said Andrija Artukovic, alias Alois Anich, charged as aforesaid, and that he may be brought before a commissioner or magistrate qualified to act in Extradition matters to the end that evidence of criminality may be [12] heard, and if on such hearing such commissioner or magistrate deems the evidence sufficient to sustain the charges of murder under the provisions of the said Treaty, said magistrate or commissioner shall certify the same to the Secretary of State, Washington, D. C. in order that the warrant may issue upon the requisition of the proper authority of said government of the Federal Peoples Republic of Yugoslavia for the surrender of said Andrija Artukovic, alias Alois Anich, according to the stipulations of said Treaty, and for such other action as the commissioner or

magistrate is required under the provisions of said Treaty and the laws of the United States.

Dated: Los Angeles, California, August 29, 1951.

/s/ RAFO IVANCEVIC,
Consul General of the Federal Peoples Republic of Yugoslavia, Complainant.

United States of America,
Southern District of California—ss.

Before me, Howard Calverley, United States Commissioner for the Southern District of California, personally appeared Rafo Ivancevic, the complainant, on the 29th day of August, 1951, who being duly sworn, says that the foregoing information is true, as he verily believes.

HOWARD V. CALVERLEY

Subscribed and sworn to before me this 29th day of August, 1951.

/s/ HOWARD V. CALVERLEY.

Duly verified.

[Endorsed]: Filed Sept. 12, 1951. [14]

[Title of District Court and Cause.]

ORDER TO SHOW CAUSE WHY WRIT OF HABEAS CORPUS SHOULD NOT ISSUE

Upon reading the verified petition of the petitioner on file herein:

It is hereby ordered that James J. Boyle, United States Marshal for the Southern District of Cali-

fornia, appear before the above-entitled Court, in the Courtroom of the Honorable Peirson M. Hall, at the United States Post Office and Court House Building, 312 North Spring Street, Los Angeles, California, on the 17th day of September, 1951, at 10 a.m. of said day, then and there to have the body of Andrija Artukovic in custody and in said Courtroom and to show cause if any he may have why Andrija Artukovic should not be released from such custody or the custody of such officer or agents as may have the same for and on his behalf, upon such reasonable bail as may be determined by this Court.

It is hereby ordered, good cause having been shown, that this order and the said petition may be served upon the respondent herein on or before the [16] 13th day of September, 1951, at 5 p.m. of said day.

Dated: September 12, 1951.

/s/ PEIRSON M. HALL,
United States District Judge

[Endorsed]: Filed Sept. 12, 1951. [17]

[Title of District Court and Cause.]

RETURN TO ORDER TO SHOW CAUSE

I, James J. Boyle, United States Marshal for the Southern District of California, respondent herein, on behalf of myself and each and all of my agents and deputies, respectfully make the following return to this Honorable Court to the Order to Show Cause

issued pursuant to the Petition for Writ of Habeas Corpus in the above case:

I.

That Andrija Artukovic, hereinafter referred to as the petitioner, is not being illegally restrained by me of his liberty but is in my custody under proper and lawful authority.

(A) That petitioner was taken into custody on August 29, 1951, at Los Angeles, California, by authority of a Commissioner's Warrant of Arrest, a copy of which is attached hereto, marked Exhibit A, and the original of which is on file in Case No. 283, Commissioner's Docket No. 9, of United States Commissioner Howard V. Calverley. That the petitioner was brought before the nearest United States Commissioner, namely, Howard V. Calverley, at Los Angeles, California, and was by said Commissioner committed without bail to the custody of your respondent [18] as United States Marshal for the Southern District of California.

(B) That there is attached hereto as a part of this Return, and marked Exhibit B, a copy of the Commissioner's Temporary Commitment, and that the original of that Commitment is in the file of the United States Commissioner, Howard V. Calverley, in Case No. 283, Commissioner's Docket No. 9.

Wherefore, the respondent, James J. Boyle, United States Marshal for the Southern District of California, having made due and full Return to the Order to Show Cause heretofore issued herein pursuant to the Petition for Writ of Habeas Corpus,

respectfully prays that the Petition for Writ of Habeas Corpus be dismissed and that the petitioner, Andrija Artukovic, be remanded to the respondent's custody to be dealt with according to the laws of the United States of America.

JAMES J. BOYLE,
United States Marshal
/s/ By R. A. RANSDELL,
Chief Deputy U. S. Marshal.

United States of America
Southern District of California—ss.

R. A. Ransdell, being first duly sworn, on his oath deposes and says that he is the person who makes the aforesaid Return; that he has read the same and knows the contents thereof; and that the same is true of his own knowledge and belief.

/s/ R. A. RANSDELL.

Subscribed and sworn to before me this 14th day of September, 1951.

[Seal] EDMUND L. SMITH,
Clerk, U. S. District Court
Southern District of California,
/s/ By E. M. ENSTROM, JR.,
Deputy. [19]

EXHIBIT A

WARRANT OF ARREST

To Any United States Marshal or Other Authorized Officer:

You are hereby commanded to arrest Andrija Artukovic, alias, Alois Anich, and bring him forthwith before the nearest available United States Commissioner to answer to a complaint charging him with the crime of murder committed in the Federal Peoples Republic of Yugoslavia as enumerated in Article II of the Extradition Treaty proclaimed May 17, 1902, which treaty is presently in force between the United States and the Federal Peoples Republic of Yugoslavia in violation of U.S.C. Title, 18, Section 3184 and said treaty heretofore mentioned.

Date August 29, 1951.

[Seal] HOWARD V. CALVERLEY,
United States Commissioner.

Return

Received Aug. 29, 1951 at L. A. Cal., and executed by arrest of Andrija Artukovic, at 13305 S San Pedro St L. A. Co. on Aug. 29, 1951, at 2:36 p.m.

Date Aug. 29, 1951.

JAMES J. BOYLE,
U. S. Marshal,
By ROY H. WEBB,
Deputy. [20]

EXHIBIT B

TEMPORARY COMMITMENT OF ANDRIJA ARTUKOVIC

To the United States Marshal of the Southern District of California:

You are hereby commanded to take the custody of the above named defendant and to commit him with a certified copy of this commitment to the custodian of a place of confinement within this district approved by the Attorney General of United States where the defendant shall be received and safely kept until discharged in due course of law. The above named defendant has been arrested but not yet fully examined by me upon the complaint of Rafo Ivancevic, charging that on or about August 1, 1941 at Prebilovci, Dist. of Capljina in the Federal Peoples Republic of Yugoslavia the defendant did murder and cause to be murdered one Bozica Bulat, age 37 years, in violation of U.S.C. Title 18 Section 3184 Extradition treaty with Servia of May 17, 1902; and he has been directed to furnish bail in the sum of—no bail set—dollars ($.....).

Dated August 29, 1951.

[Seal] HOWARD V. CALVERLEY,
United States Commissioner

Return

Received this commitment and designated prisoner on August 29th, 1951, and on August 29, 1951, committed him to Los Angeles Co. Jail, and left

with the custodian at the same time a certified copy of this commitment.

Dated August 29, 1951.

JAMES J. BOYLE,
U. S. Marshal,
By CHARLES W. ROSS,
Deputy.

Affidavit of Service by Mail attached

[Endorsed]: Filed Sept. 14, 1951. [21]

[Title of District Court and Cause.]

APPEARANCE OF RAFO IVANCEVIC,

Counsel General of Federal Peoples Republic of Yugoslavia.

Rafo Invancevic presents herewith his appearance in the above-entitled habeas corpus proceeding on behalf of the Federal Peoples Republic of Yugoslavia, and respectfully shows:

I.

That he is the Consul General of the Federal Peoples Republic of Yugoslavia at San Francisco: that in the above-entitled matter he acts for and in behalf of the government of the Federal Peoples Republic of Yugoslavia.

II.

That on August 29, 1951 he caused to be filed befor the Honorable United States Commissioner for the Southern District of California a complaint in

extradition, a copy of which is attached to petitioner's petition for a writ of habeas corpus, marked Exhibit "A" therein. [27]

III.

That on August 29, 1951 petitioner was taken into custody by the authority of a Commissioner's Warrant of Arrest, a copy of which is attached to the return to the order to show cause herein of James J. Boyle, United States Marshal for the Southern District of California, and marked Exhibit "A" herein.

IV.

That thereafter said petitioner was committed without bail to the custody of respondent, James J. Boyle, as United States Marshal for the Southern District of California, by a temporary commitment dated August 29, 1951, a copy of which temporary commitment is attached to the return of said United States Marshal, marked Exhibit "B" therein.

V.

That a hearing has been set by Honorable Howard V. Calverley, United States Commissioner for the Southern District of California, on October 22, 1951 for the production by the Federal Peoples Republic of Yugoslavia of evidence of criminality supporting the charges contained in said complaint.

VI.

That the provisional arrest and detention of said petitioner in the proceedings before said United States Commissioner were instituted by Rafo Ivan-

cevic as Consul General, as aforesaid, on behalf of the Federal Peoples Republic of Yugoslavia, pursuant to the provisions of a Treaty of Extradition proclaimed May 17, 1902 between the United States of America and the Kingdom of Servia, which said Treaty is presently in force between the United States and the Federal Peoples Republic of Yugoslavia.

VII.

That through consular channels, said Rafo Ivancevic is informed and believes that requisition for extradition of petitioner, Andrija Artukovic will be promptly made, accompanied by formal [28] documents upon which demand for extradition is founded, and that the necessary evidence of criminality will be presented on behalf of said Federal Peoples Republic of Yugoslavia pursuant to Article IV of said Treaty on or before said 22nd day of October, 1951.

VIII.

In the above entitled habeas corpus proceedings the Federal Peoples Republic of Yugoslavia, as the demanding government for the extradition of the petitioner, Andrija Artukovic, is the real party in interest in said proceeding in so far as the arrest of said petitioner and his detention without bail is concerned.

Wherefore, Rafo Ivancevic, as Consul General of the Federal Peoples Republic of Yugoslavia, prays that said application for a writ of habeas corpus be denied and that said Andrija Artukovic be held in custody without bail pending the formal extradition

proceedings before the Honorable Howard V. Calverley, United States Commissioner.

Dated September 15, 1951.

/s/ RONALD WALKER,
Attorney for Rafo Ivancevic, Consul General of Federal Peoples Republic of Yugoslavia.

[Endorsed]: Filed Sept. 17, 1951. [29]

[Title of District Court and Cause.]

AMENDED PETITION FOR WRIT OF HABEAS CORPUS

To the Judges of the United States District Court for the Southern District of California:

Andrija Artukovic, the petitioner above named, hereby files this Amended Petition before this Honorable Court for a Writ of Habeas Corpus, directing the respondent, James J. Boyle, the United States Marshal for the Southern District of California, in whose custody the petitioner is now restrained of his liberty, to produce the body of your petitioner, Andrija Artukovic, before this Court at a time and place to be specified and then and there to show cause why petitioner should not be released from the custody of the respondent upon bail in such reasonable sum as may be determined by this Court, and to release the petitioner unconditionally.

I.

The petitioner realleges Paragraphs I, II, III, IV, V, VI and VII of his petition for writ of habeas corpus and incorporates the same herein as though set forth in full. [40]

II.

In amendment to the said petition, the petitioner alleges that he was illegally arrested and is being unlawfully detained and held in custody because the complaint filed on August 29, 1951, does not state a cause under which extradition proceedings are provided and does not comply with the terms of the statute enacted for extradition proceedings.

III.

Your petitioner is being unlawfully restrained and held in custody, because the treaty under which these proceedings were instituted was not with the complaining Government, but was with the Kingdom of Servia and has since expired; that the said treaty is not in effect nor the terms thereof between the complaining Government and the United States of America.

IV.

Your petitioner is being unlawfully restrained and held in custody, because the offenses charged and the statements made by the complaining Government establish that the complaint seeks the return of petitioner on the basis of political offenses which are not the subject of extradition proceedings, as provided in the alleged Treaty, Article VI.

V.

Your petitioner is being unlawfully restrained and held in custody, because the offense charged is not one upon which extradition is based within the terms of the alleged Treaty.

Wherefore, the petitioner prays that a writ of habeas corpus may issue directing James J. Boyle, the United States Marshal for the Southern District of California, and to any other peace officer having custody of the body of your petitioner, commanding him to have the body of your petitioner, Andrija Artukovic, produced before this Court at a time and place specified, and that this Honorable Court order and direct the petitioner to be released from such custody forthwith upon such reasonable bail as this Court may determine in the premises;

Further, that the said petitioner be released unconditionally and [41] discharged in full from custody; and

Further, that the petitioner be released upon reasonable bail to return to this Court upon a day fixed for further hearing on the facts and law pertaining to the validity of the extradition proceedings.

Dated: September 19, 1951.

/s ANDRIJA ARTUKOVIC.
O'CONNOR & O'CONNOR,
/s/ By EDWARD J. O'CONNOR,
Attorneys for Petitioner.

Of Counsel:

/s/ ROBERT T. REYNOLDS,
/s/ VINCENT G. ARNERICH.

Duly Verified.

[Endorsed]: Filed Sept. 19, 1951. [42]

In the United States District Court, Southern District of California, Central Division

[Title of Cause.]

MINUTES OF THE COURT

Date: Sept. 17, 1951. At Los Angeles, Calif.

Present: The Honorable Peirson M. Hall, District Judge. Deputy Clerk: S. W. Stacey. Reporter: A. H. Wahlberg. Counsel for Plaintiff: Edw. J. O'Connor and R. T. Reynolds. Counsel for Defendant: Geo. Danielson, Ass't U. S. Att'y, for James J. Boyle, U. S. Marshal; Ronald Walker for Rafo Ivancevic, Consul Gen'l of Federal Peoples Republic of Yugoslavia.

Nature of Proceedings

Hearing on order to show cause why Writ of Habeas Corpus should not issue, pursuant to order of Sept. 12, 1951.

Court hears argument and evidence on Petition for Writ of Habeas Corpus.

Filed memo. of points and authorities of Rafo Ivancevic, Consul Gen'l, etc.

Andrija Artukovic testifies for petitioner.

Petitioner's Ex. 1 to 8, both incl., are marked for ident. and admitted in evidence.

John Artukovic testifies for petitioner.

Ruling

Court grants petition of Rafo Ivancevic, Consul Gen'l of Federal Peoples Republic of Yugoslavia for leave to appear.

It is ordered that Robert T. Reynolds is admitted to practice in this Court as counsel for petitioner for purposes of this case only.

It is ordered that U.S.A. and Yugoslavia produce letters of March 31, 1951, May 14, 1951, and May 21, 1951.

Ordered: Further hearing continued to 10 a.m., Sept. 19, 1951.

EDMUND L. SMITH, Clerk
/s/ By S. W. STACEY, Deputy Clerk. [45]

In the United States District Court, Southern District of California, Central Division

[Title of Cause.]

MINUTES OF THE COURT

Date: 9/19/51. At Los Angeles, Calif.

Further Hearing on Petition for Writ Habeas Corpus

Present: The Honorable Peirson M. Hall, District Judge. Deputy Clerk: S. W. Stacey. Reporter: Agnar Wahlberg. Counsel for Petitioner: Edward

J. O'Connor, Robert T. Reynolds and Vincent G. Arnerich. Counsel for Respondents: George Danielson for deft. James J. Boyle, Ronald Walker for Rafo Ivancevic, Consul General Yugoslavia.

Proceedings: Further hearing on order to show cause why Writ of Habeas Corpus should not issue pursuant to order dated 9/12/51.

The following witnesses are sworn and testify on behalf of Plaintiff: Robert Ross, Marius Matici.

The following exhibits are admitted into evidence: Petitioner: 9, 10, 11, 12; Respondent: DG-A, DG-B.

An amended Petition for Writ of Habeas Corpus is filed and it is ordered that paragraph four (4) of the amended petition be stricken upon the motion of the Atty. for the demanding Government. It is ordered that bail of the petitioner be enlarged.

It Is Ordered that each party have to 10/1/51 5 p.m. to file opening briefs and each party have to 10/4/51, 5 p.m. to file reply briefs. Bond is fixed at $50,000.00 for appearance of Andrija Artukovic on Oct. 8, 1951, at 10 a.m. for further hearing on petition for writ of habeas corpus. Bond is to be by private parties, qualified before the Clerk of the Court or the U.S. Commissioner, or cash, (and not a corporate bond) and conditioned that he will not leave the jurisdiction of the court in the meantime, that after Oct. 8, 1951, he shall thereafter respond to all further orders which may be made in connection with these proceedings, in default of which the bond will be forfeited to the U.S.A. On motion of Atty. Walker, for demanding Government, he is al-

lowed to withdraw exhibit DG-B for purpose of making photostat for substitution. Further hearing is continued to 10/8/51, 10 a.m.

EDMUND L. SMITH, Clerk
/s/ By S. W. STACEY, Deputy Clerk. [46]

In the United States District Court, Southern District of California, Central Division

[Title of Cause.]

MINUTES OF THE COURT

Date: Oct. 8, 1951. At Los Angeles, Calif.

Present; The Honorable Peirson M. Hall, District Judge. Deputy Clerk: S. W. Stacey. Reporter: A. H. Wahlberg. Counsel for Plaintiff: Edw. J. O'Connor, Rob't T. Reynolds, and V. G. Arnerich. Counsel for Defendant: Geo. Danielson, Ass't U.S. Att'y; Ronald Walker for Rafo Invancevic, Consul General of Yugoslavia, Demanding Gov't.

Nature of Proceedings

Further hearing on order to show cause why Writ of Habeas Corpus should not issue, pursuant to order of Sept. 12, 1951.

Court hears argument on whether or not treaty is, or is not in existence.

Demanding Gov't Ex. DG-C to DG-G, incl. are marked for ident, and admitted in evidence.

Petitioner's Ex. 13 is marked for ident. and admitted in evidence.

Vincent Vitalli is called, sworn, and testifies as interpreter from French to English and vice versa.

Tihomil Drezja is called, sworn, and testifies for petitioner.

Petitioner's Ex. 14 and 14-A are marked for ident. and admitted in evid.

Court orders cause continued to Oct. 22, 1951, 10 a.m., for further proceedings; amended complaint to be filed by Oct. 15, 1951, and each party to file briefs by Oct. 22, 1951. Defendant to remain on bond until Oct. 22, 1951, 10 a.m. The case to be submitted on treaty question.

EDMUND L. SMITH, Clerk
/s/ By S. W. STACEY, Deputy Clerk [47]

In the United States District Court, Southern District of California, Central Division

[Title of Cause.]

MINUTES OF THE COURT

Date: 10/22/51. At Los Angeles, Calif.

Present: The Honorable Peirson M. Hall, District Judge. Deputy Clerk: S. W. Stacey. Reporter: Agnar Wahlberg. Counsel for Plaintiff: Edward J. O'Connor, Robert T. Reynolds and V. G. Arnerich. Counsel for Defendant: George Danielson, Ass't U.S. Atty., for James J. Boyle; Ronald Walker for Consul General of Yugoslavia.

Nature of Proceedings

Further hearing on order to show cause why Writ of Habeas Corpus should not issue, pursuant to order dated 9/12/51.

Demanding Government's Exhibit DG-H is marked for identification and ordered in evidence.

Ruling

On the court's own motion further hearing is continued to 11/5/51, 10 a.m.

EDMUND L. SMITH, Clerk
s/ By S. W. STACEY, Deputy Clerk [48]

In the United States District Court; Southern District of California, Central Division

[Title of Cause.]

MINUTES OF THE COURT

Date: Nov. 5, 1951. At Los Angeles, Calif.

Present: The Honorable Peirson M. Hall, District Judge. Deputy Clerk: S. W. Stacey. Reporter: A. H. Wahlberg. Counsel for Plaintiff: Edw. J. O'Connor. Counsel for Defendant: Geo. Danielson, Ass't U. S. Atty., for James J. Boyle, U. S. Marshal; Ronald Walker for Rafo Ivancevic, Consul Gen'l of Yugoslavia, Demanding Gov't.

Nature of Proceedings

For further hearing on order to show cause why Writ of Habeas Corpus should not issue.

Filed supplemental memo. of demanding Gov't.

Ruling

Ordered: on Court's own motion continued to Jan. 14, 1952, 10 a.m., and defendant enlarged upon present bail.

EDMUND L. SMITH, Clerk

/s/ By S. W. STACEY, Deputy Clerk [49]

In the United States District Court, Southern District of California, Central Division

[Title of Cause.]

MINUTES OF THE COURT

Date: January 14, 1952. At Los Angeles, Calif.

Present: The Honorable Peirson M. Hall, District Judge. Deputy Clerk: S. W. Stacey. Reporter: Agnar Wahlberg. Counsel for Plaintiff: Edward J. O'Connor. Counsel for Defendant: Arline Martin, for James J. Boyle; Ronald Walker, for Rafo Ivancevic, Consul Gen'l Yugoslavia.

Nature of Proceedings

Further Hearing on order to show cause why Writ of Habeas Corpus should not issue pursue to order of September 12, 1951.

Filed 3rd supplemental memo of demanding Government.

On the Court's own motion.

Ruling

It Is Ordered that the cause is continued to February 18, 1952, 10 a.m.

It Is Ordered that the Petitioner return at that time.

EDMUND L. SMITH, Clerk
/s/ By S. W. STACEY, Deputy Clerk [50]

In the United States District Court, Southern District of California, Central Division

[Title of Cause.]

MINUTES OF THE COURT

Date: Feb. 18, 1952. At Los Angeles, Calif.

Present: The Honorable James M. Carter, District Judge; calling Calendar of The Honorable Peirson M. Hall, District Judge. Deputy Clerk: S. W. Stacey. Reporter: Sam Goldstein. Counsel for Plaintiff: Edward J. O'Connor; V. C. Arnerich. Counsel for Defendant: Arline Martin, Asst. U. S. Attorney, for James J. Boyle; Ronald Walker, for Rafo Ivancevic, Consul General Yugoslavia.

Nature of Proceedings

For further hearing on order to show cause why

Writ of Habeas Corpus should not issue, pursuant to notice of September 12, 1951.

Ruling

On the Court's own motion It Is Ordered that the cause is continued to April 7, 1952, 10 a.m. for further hearing.

EDMUND L. SMITH, Clerk
/s/ By S. W. STACEY, Deputy Clerk [51]

In the United States District Court, Southern District of California, Central Division

[Title of Cause.]

MINUTES OF THE COURT

Date: April 7, 1952. At Los Angeles, Calif.

Present: The Honorable Peirson M. Hall, District Judge. Deputy Clerk: S. W. Stacey. Reporter: A. H. Wahlberg. Counsel for Plaintiff: Edw. J. O'Connor and V. C. Arnerich. Counsel for Defendant: Ronald Walker for Rafo Ivancevic, Consul General of Yugoslavia.

Nature of Proceedings

For further hearing on order to show cause why Writ of Habeas Corpus should not issue.

Ruling

It Is Ordered on the Court's own motion that

cause is continued to May 12, 1952, 10 a.m., for said hearing.

EDMUND L. SMITH, Clerk
/s/ By S. W. STACEY, Deputy Clerk [52]

In the United States District Court, Southern District of California, Central Division

MINUTES OF THE COURT

Date: May 12, 1952. At Los Angeles, Calif.

Present: The Honorable Leon R. Yankwich, District Judge; calling Calendar of Hon. Peirson M. Hall, District Judge. Deputy Clerk: S. W. Stacey. Reporter: Marie Zellner. Counsel for Plaintiff: V. C. Arnerich. Counsel for Defendant: Arline Martin, Ass't U. S. Att'y.

Nature of Proceedings

For further hearing on order to show cause why Writ of Habeas Corpus should not issue, pursuant to order of Sept. 12, 1951.

Ruling

It Is Ordered, on Court's own motion, that cause is continued to June 9, 1952, 10 a.m.

EDMUND L. SMITH, Clerk
/s/ By S. W. STACEY, Deputy Clerk [53]

In the United States District Court, Southern District of California, Central Division

[Title of Cause.]

MINUTES OF THE COURT

Date: June 9, 1952. At Los Angeles, Calif.

Present: The Honorable Peirson M. Hall, District Judge. Deputy Clerk: S. W. Stacey. Reporter: Marie Zellner. Counsel for Plaintiff: V. C. Arnerich. Counsel for Defendant: Ronald Walker for Rafo Ivancevic, Consul Gen'l of Yugoslavia, Demanding Gov't.

Nature of Proceedings

For further hearing on order to show cause why Writ of Habeas Corpus should not issue, pursuant to order of Sept. 12, 1951.

Ruling

On the Court's own motion It Is Ordered that hearing on order to show cause, etc., is continued to July 14, 1952, 10 a.m.

EDMUND L. SMITH, Clerk
/s/ By S. W. STACEY, Deputy Clerk [54]

[Title of District Court and Cause.]

MEMORANDUM

Appearances: For the Petitioner: O'Connor & O'Connor, 530 West Sixth St., Los Angeles 14, Calif. For the Respondent: Walter S. Binns, United

States Attorney, Clyde C. Downing, Chief, Civil Division, Assistant U. S. Attorney, Arline Martin, Assistant U. S. Attorney, 600 Federal Bldg., Los Angeles 12, Calif. For the Federal People's Republic of Yugoslavia: Ronald Walker, 1023 Rowan Bldg., Los Angeles 13, Calif. [55]

On August 29, 1951, the petitioner, Andrija Artukovic, was arrested in Los Angeles pursuant to a warrant of arrest issued by the United States Commissioner of this district and division, Howard V. Calverley, upon a complaint filed that day for extradition to the country now known as Yugoslavia.

The complaint was signed by one Rafo Ivancevic who described himself as "Consul General of the Federal People's Republic of Yugoslavia." The complaint did not directly charge the petitioner herein with any offense but alleged that the complainant Ivancevic was "informed through Yugoslavian Consular channels" that the petitioner herein was duly charged in Yugoslavia with "having murdered and caused to be murdered" several persons named in the complaint, during the years 1941 and 1942, and that a warrant had been issued in Yugoslavia for his arrest.

Extradition was and is sought under the provisions of Title 18 U.S.C. 3181, 3184, 3188, 3189, 3190, 3195,[1] [See page 65] and the Treaty of Extradition with the Kingdom of Serbia of May 17, 1902, 32 Stat. 1890.[2] [See page 68.]

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[1] Footnotes are appended at the end of the Opinion. Page numbers are of this printed record.

Section 3141 of Title 18 U.S.C.[3] [See page 70.] does not permit bail to be taken by a Commissioner in a capital case and accordingly it was refused by the Commissioner, whereupon the petitioner filed the petition for a writ of habeas corpus on September 12, 1951, wherein his release was then sought on bail pending the hearing on the complaint for extradition before the Commissioner.

At the time of the return to the writ on September 17, 1951, the United States Marshal, Honorable James J. Boyle, appeared by the United States Attorney, and the Yugoslavian Government, appeared by its counsel, Ronald L. Walker, Esq., both in opposition to the granting of the writ.

On that hearing it became apparent from arguments of counsel that the petitioner desired to and was in fact, attacking [56] the legal merits of the extradition complaint on grounds not stated in the then pending petition. Accordingly, the petitioner, upon motion, was allowed to amend by adding to the petition challenges to the legal merits of the proceedings on the grounds of non-compliance with applicable statutes, non-existence of an extradition treaty with Yugoslavia, and that the complaint showed on its face that the alleged crimes were "political offenses," that is, that the complaint on its face did not allege facts which, if true, would entitle the Yugoslavian government to extradite the petitioner either under the statutes or under the treaty depended upon by the Yugoslavian government. The amended petition was filed September 19, 1951.

The petition as thus amended, together with the response filed by the Marshal and by the Yugoslavian Government raised serious questions which would not permit of a precipitous or hurried decision. The parties desired to brief and to argue the legal points raised. Accordingly the matter was continued to October 8, 1951.

In the exercise of the undoubted power and jurisdiction of the court on the filing of the petition for a writ of habeas corpus to enlarge a petitioner on bail pending the determination of the merits of the writ, (Barth v. Clise, 12 Wall., 400, 402; 79 U.S. 401; (1871); Wright v. Henkel (1903), 190 U.S. 40; In re Mitchell (1909) 171 Fed. 289; Fernandez v. Phillips (1925) 268 U.S. 311; In re Gannon (1928) 27 F. 2d 362; In re Klein (1930) 46 F. 2d 85) the petitioner was enlarged on bail pending the final hearing and decision on the petition for writ of habeas corpus. Although petitioner had been enlarged on bail in the sum of $1,000 in the deportation proceeding against him, his bail herein was fixed at $50,000, with his consent, and corporate bail was not allowed.' [See page 71.]

On October 8, 1951, counsel for Yugoslavia indicated that he desired to file an amended complaint before the Commissioner. Accordingly, after further testimony and argument on that day, the matter was again continued to October 22, 1951. In the meanwhile and on October 15, 1951, the Yugoslavian Government filed with the [57] Commissioner an amended complaint, a part of which con-

sisted of authenticated copies of an English translation of a "warrant" issued by the "County Court of Zagreb" of the "People's Republic of Croatia" on September 6, 1951, and an "indictment" which was filed with that court on the same day. This complaint on its face showed that no charge had been filed in any court in Yugoslavia on the date of the filing of the original complaint (August 29, 1951) and was not filed until some days thereafter, (September 4, or 5, or 6, 1951.) That deficiency and others as existed in the original complaint and as are not present in the amended one were remedied by the amended complaint. Ekiu v. United States (1892), 142 U.S. 651; Iasigi v. Van De Carr (1897) 166 U.S. 391.

The parties stipulated that the warrant and the bond on the original petition for a writ of habeas corpus should stand as against the new complaint. On October 22, 1951, the matter was continued to November 5, 1951, for further briefing, which had not then been finished by either party, and on that date it was continued to January 14, 1952, in order that counsel for the various parties might complete their research and file briefs, many documents and materials upon which the parties rely being either out of print or not available in this community, and available only in the State Department or the Library of Congress. On November 5, 1951, the parties were given thirty days to file their briefs and supporting materials, but the petitioner's was not received until January 11, 1952, and the Yugo-

slavian briefs were not filed until the morning of the hearing on January 14th, 1952.

In recognition of the difficulties of research, the seriousness of the questions involved and the consequences of any judgment of this court, the parties have thus been allowed full opportunity for research, briefing and hearing.

In consideration of the petition for the writ filed, as it was, prior to the hearing before the Commissioner, this Court is limited in its inquiry to whether the Commissioner has jurisdiction. [58] Wright v. Henkel (1903) 190 U.S. 40; In re Mitchell, 171 Fed. 289 (1909).

In the consideration of that question, ordinary technicalities of pleading are applicable only to a limited extent, but are entitled to respectful notice. Grin v. Shine, 187 U.S. 181 (1902); Glucksman v. Henkel (1911), 221 U.S. 508. The pleadings must, however, conform to the pleading rules of the State of California, the law of the place where the petitioner was found. Grin v. Shine, supra; In re Ezeta (1894) 62 Fed. 972 (N.D. Cal.)

The questions involving jurisdiction reduce themselves to two, which, broadly stated are: (1) whether or not the extradition treaty with the Kingdom of Serbia of 1902 is an extradition treaty and in existence between Yugoslavia and the United States, and: (2) if such treaty is in force, whether or not the amended complaint as it now stands states an extraditable offense on its face.

It is conceded by all parties that on May 17, 1902, an extradition treaty between the United States of America and the Kingdom of Serbia was proclaimed to be in effect after ratification by the Senate of the United States on January 27, 1902, ratification by the President on March 7, 1902, ratification by Serbia on March 17, 1902, and an exchange of ratifications at Belgrade on May 13, 1902. The pertinent provisions of the treaty are set forth in the marginal footnote No. 2, ante. It is likewise conceded, that no other treaty of extradition has been entered into since then, either with the Serb-Croat-Slovene State, or Yugoslavia, or the Federal People's Republic of Yugoslavia.

But the petitioner contends that the Kingdom of Serbia has long since ceased to exist as a "foreign country" or as a "state" or independent sovereignty; that "such foreign government" as that term is used in Section 3181 of Title 18 U.S.C., i.e., the government of the Kingdom of Serbia in 1902 has likewise long ceased to exist; that the foreign country, i.e., Yugoslavia, seeking extradition is an entirely different "foreign country" than the Kingdom of Serbia; that the government of Yugoslavia is an entirely different "foreign government" than the government of the Kingdom of Serbia in 1902 as it [59] existed at the time of the treaty; that there has not been the continuity of either the country or the government which will permit it to be said that they are the same; that if there has been such continuity, the government of Yugoslavia has renounced the treaty; that the

statement by the State Department of the United States and of the Yugoslavian Ambassador that the treaty is in force is a mere fiat' [See page 75.] and is not in compliance with the constitutional requirement that treaties with foreign states be submitted to the Senate for ratification before they become effective; and that no such treaty has either been negotiated with Yugoslavia or submitted to the Senate of the United States for ratification or approval.

It is contended, among other things, by the respondent Marshal and the demanding government that the determination of whether a treaty is in existence is purely a political one to be determined exclusively by the Executive Department of the Government, and that no court has any power to inquire into that decision and that in any event, the treaty of 1902 is in force.

As seen from footnote 5, on April 16, 1946, after an exchange of correspondence with the present Yugoslavian Government and the State Department of the United States, the Yugoslavian Government stated: "Pursuant to international custom the new Yugoslavian Government will assume responsibility for Yugoslavia's international obligations and be disposed to confirm its continuing recognition of the existing treaties and agreements between Yugoslavia and the United States," to which the Secretary of State of the United States replied in part:

"The Secretary of State is gratified to receive this assurance that the Federal People's Republic of Yu-

goslavia confirm its continuing recognition of the existing treaties and agreements between the United States and Yugoslavia * * * ", and then proceeded to and did receive an ambassador from Yugoslavia in recognition of that government.

It is contended by the respondents that such exchange [60] between the State Department and Yugoslavia did two things: (1) recognized Yugoslavia as a foreign state, and, (2) decided that the treaty with Serbia of 1902 was an "existing treaty * * * between the United States and Yugoslavia."

Whether or not a foreign government is one which shall be "recognized" as the one with which the United States shall treat as the government of a foreign state is a question which undoubtedly lies in the exclusive decision of the Executive Department. (The Sapphire (1870) 78 U.S. 164; The Rogdai, (D.C. Calif. 1920) 278 Fed. 294; Lehigh Valley etc. v. State of Russia, (1927) CA 2, 21 Fed. 2d 396; Guaranty Trust v. United States (1938) 304 U. S. 126)

I come then to the contention by respondents that the State Department by its statement concerning "continuing recognition of existing treaties and agreements between the United States and Yugoslavia" and that the treaty is in "force" [See page 79] is a final decision that the treaty between the United States and the Kingdom of Serbia of 1902 is in existence, and not reviewable, and that the court cannot inquire into the existence of the treaty; but which the petitioner contends

is beyond the constitutional power of the Executive Department, as hereinbefore set forth.

Article 6, Clause 2, of the Constitution of the United States provides: "This constitution, and the laws of the United States which shall be made in sursuance thereof; and all Treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; * * * " Article 3, Section 1, provides: "The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the Congress may from time to time ordain and establish; * * * " and in Section 2 of Article 3: "The judicial power shall extend to all cases, in law and equity arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; * * * " Article 2, Section 1, Clause 1, provides: "The executive power shall be vested in a President of the United States of America;" and in [61] Section 2, Clause 2: "He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur; * * * " and in Section 3 of Article 2, " * * * he shall take care that the laws be faithfully executed * * * "

Plainly, the President cannot make a treaty without the consent of the Senate. A treaty when made is a law. Foster v. Neilson, 2 Pet. 253 (1829). It has been settled since Marbury v. Madison (1803) 1 Cranch 137, that the power to determine whether a law exists, i.e., whether or not it is constitutional, and to interpret it, is a judicial power and rests

solely in the courts with all the safeguards of review and does not lodge in the ipsi dixit of the Executive Department of the government or any branch thereof. (See also Youngstown, etc., v. Sawyer, June 2, 1952, 343 U.S. 937.) Any other conclusion flies not only in the face of the plain words of the constitution, but also in the face of the fundamental concepts of this government: that there shall be and remain three separate and autonomous branches of this government; the Congress to make laws; including the power to make a treaty effective by ratification or non-effective by failure to ratify; the executive to enforce them; and the judicial to interpret them and to determine whether the enactments of Congress are constitutional, as well as to determine whether or not any act of the Executive Department is lawful and not in excess of the powers granted to the Executive by the Constitution or any act of Congress. Any other construction would wholly avoid that wise and salutary provision of the Constitution which prevents the private negotiation of treaties, by changing Executives and requires rather that they be approved by the Senate after opportunities for the public to know what they are proposed to be committed to; and for public hearing and debate. It is recalled that Point One of Woodrow Wilson's Fourteen Points was that there should be open covenants between states openly arrived at. [See page 82.]

Statements in the cases relied on by respondents as being to the contrary are dicta. In those cases,

it is noted that wherever [62] the question was raised, the Supreme Court considered and determined whether or not a treaty was in existence. In Terlinden v. Ames (1902) 184 U.S. 270, the court stated (p. 282): "This brings us to the real question, namely, the denial of the existence of a treaty of extradition between the United States and the Kingdom of Prussia, or the German Empire." The court then proceeded to examine the question and concluded that the treaty did exist. It was in connection with a discussion as to whether or not the obligation of the treaty had been observed after the creation of the German Empire that the court made the statement so heavily relied upon by the respondent and the demanding government, found on page 285: "And without considering whether extinguished treaties can be renewed by tacit consent under our Constitution, we think that on the question whether this treaty has ever been terminated, governmental action in respect to it must be regarded as of controlling importance. During the period from 1871 to the present day extradition from this country to Germany, and from Germany to this country, has been frequently granted under the treaty, which has thus been repeatedly recognized by both governments as in force." (Underscoring supplied.) It is noted that the court referred to governmental action, not declarations, opinions, statements or mere correspondence by the executive department; and that the court interpreted the word "action" as it is used,

to mean the actual extradition of persons from each country to the other.

In the instant case, although ample opportunity has been given counsel, not one single instance of extradition under the Serbian Treaty of 1902, since the conclusion of the first World War has been called to the Court's attention, and for that matter, not one single instance of extradition under the treaty since its effective date in 1902.

In Gesellschaft v. Umbreit (1908) 208 U.S. 570, the court assumed the treaty involved to be in force. The parties did not challenge the existence of the treaty, but made certain contentions concerning its interpretation. [63]

In Charlton v. Kelly (1913), 229 U. S. 447, the question was whether or not Italy by its conduct which was contended to be in abrogation of the treaty of extradition, would justify the United States in refusing extradition. The whole controversy revolved around the meaning of the word "persons" in the treaty. Italy had held that it did not mean her citizens, but the court held, in line with the views of the State Department, that the word "persons" included citizens of the United States. It was thus a question of interpretation and not a question of the existence of the treaty.

Coleman v. Miller (1939) 307 U. S. 433, involved the right of persons to restrain the officers of Congress from certifying to the passage of the child labor amendment by the State of Kansas, and had no question whatsoever of treaties or foreign relations.

Clark v. Allen (1947) 331 U. S. 503, is cited in support of the contention that the question of the existence of treaties is exclusively one for the State Department and not for the courts. The portion of the opinion relied upon is on page 514, but with the underscore and quotation as follows, it is apparent that the case does not go that far:

"It is argued, however, that the Treaty of 1923 with Germany, as a result of its defeat and the occupation by the Allies, has ceased to exist as an independent national or international community. But the question whether a state is in a position to perform its treaty obligations is essentially a political question. Terlinden v. Ames, 184 U. S. 270, 288. We find no evidence that the political departments have considered the collapse and surrender of Germany as putting an end to such provisions of the treaty as survived the outbreak of the war or the obligation of either party in respect to them. The Allied Control Council has, indeed, assumed control of Germany's foreign affairs and treaty obligations—a policy and course of conduct by the political departments wholly consistent with the maintenance and enforcement, rather than the repudiation, of pre-existing treaties." [64]

The case did not involve extradition, but rather involved the right of nationals and residents in Germany to take property [See page 82] left by Alvina Wagner in her will. The Alien Property Custodian had vested in himself all the property of the German nationals. It is also noted that the court examined the question of the existence of the

treaty and did not accept the contentions or the conclusions of the State Department carte blanche.

I conclude, therefore, that the question of whether or not a treaty exists between the United States and Yugoslavia is not a matter which lies exclusively within the Executive Department but is a judicial question to be decided by the courts.

I come now to the question as to whether or not the treaty with Serbia of 1902 is a treaty in existence with Yugoslavia.

In the consideration of that question the court is limited to such factual matters of which judicial notice may be taken and such matters as were put in evidence on the hearing which do not bear upon the conduct of the petitioner with relation to the charges in the complaint.

In doing so, it is necessary to judicially notice" [See page 83] some of the history of Croatia and other Balkan countries, without reviewing all the events which have arisen in the Bloody Balkan Cauldron (the historic battleground between eastern and western civilization) and played their part in world events.

The petitioner was born in Klobuk, a town in Croatia in the year 1900. At that time Croatia was a separate state but a part of the Austro-Hungarian Empire and had been for several hundred years. Slovenia, Herzgovinia, Dalmatia and Bosnia (later also to become a part of the Serb-Croat-Slovene State) were also then a part of the Austro-Hungarian Empire. Turkey maintained a sort of dual sovereignty over Bosnia with the Sultan as a

nominal sovereign, but the government being actually administered by an Austro-Hungarian Minister of Finance. Turkey ruled Albania, later to be a separate kingdom, as well as Macedonia, later to become a part of Greece. Prior to the first [65] World War Croatia had had for a number of years a separate Diet and sent delegates to the Hungarian Parliament in Budapest. Croat was the official language. Its judicial system was entirely autonomous as well as its "home" department. Its foreign affairs were handled by Austria-Hungary. This continued until the commencement of the first World War following the assassination of Archduke Ferdinand of Austria in Sarajevo, Bosnia, on June 28, 1914. During all this period of time Croatia was no part of and had no alliance with Serbia. The entire period during which Croatia was a part of the Austro-Hungarian Empire was marked by efforts to secure greater autonomy and independence if possible. Turkey had in fact ruled many parts of the Balkans for several hundred years. From October 1912 to May 1913 a war was fought between Bulgaria, Serbia, Greece and Montenegro on the one hand and against Turkey on the other, which then almost embroiled the whole of Europe. But with the intervention of Germany, Russia and Austria-Hungary a peace was made which forced Turkey out of Europe except for Constantinople and a small area around it and which resulted also in the return of Macedonia to Greece and in the creation of the Kingdom of Albania. But even so, in July 1913 following the conclusion of that peace, Bulgaria started

hostilities against her former allies, Serbia, Greece and Montenegro. One month, (July 29, 1914), after the killing of Archduke Ferdinand, Austria-Hungary declared war on Serbia, which was followed the same day by a declaration of war by Germany on Russia, and in turn in quick succession Germany marched on France and Belgium; Turkey declared war, so that with the declaration of war by England on August 4, 1918, World War I was on its way.

During that war Serbia cast its lot with the Allies but Croatia was part and parcel of the Central Powers, and its armies fought with them. Albeit there was a committee set up in London early in the war of Croats, Serbs and Slovenes residing within Austria-Hungary, whose program was complete independence and union with Serbia. The Croatian diet, meeting in Zagreb, the Capital of Croatia, refused to disavow that committee. [66]

As the fuse which exploded World War I was lighted in the Balkans, so it was that the first sign of its smothering occurred in the Balkans with the surrender of Bulgaria on September 29, 1918.

Almost immediately following the surrender of Bulgaria a council was set up which consisted of Croats, Slovenes and Serbs, residing within the boundaries of the former Austro-Hungarian Empire. This council later included representatives from the Kingdom of Serbia. On October 10, 1918, its headquarters were established at Zagreb in Croatia. On October 23, 1918, a Croatian regiment took possession of Fiume and promptly recognized

the authority of the council. Following that, and on October 29, the Croatian diet declared the independence of Croatia from Hungary and among other things, invited the help of the Serbian Army. On November 11, 1918, the Armistice between the Central Powers and the Allies was signed in France. On November 23, 1918, the union of Croatia, Bosnia, Herzgovnia, all formerly a part of the Austro-Hungarian Empire, was resolved in Zagreb by the above mentioned Council. About that time, the Serbian Charge d'Affaires in Washington addressed a note to the Secretary of State of the United States. On the 26th of November, 1918, Montenegro, a separate state, declared itself independent of the dynasty of Nickolas, its then king, and its desire to be united with Serbia in a Serb-Croat-Slovene State. On December 1, 1918, Alexander of Serbia was invited by the above mentioned council to proclaim the Union of the Serbs, Croats and Slovenes, living within the boundaries of the former Austrian-Hungarian monarchy, with Serbia. On December 24, 1918, Alexander proclaimed "our first State Government." In February 1919 the United States recognized the Serb-Croat-Slovene State as consisting of "all the Serbian, Croatian and Slovene provinces within the countries of the former Austo-Hungarian Monarchy and Montenegro." [See page 83.]

If the treaty of 1902 did not become effective as between the "First State Government" of the Serb-Croat-Slovene State formed in 1919, then it did not carry through to the country now known as Yugo-

slavia, so at this point I consider it is unnecessary to trace [67] the history of the unfortunate Balkans since the beginning of the second World War.

While the demanding government has cited many cases upon which it relies to support its contention that the treaty with Serbia of 1902 is in force at present, the principal reliance is placed on Terlinden v. Ames (Feb. 1902) 184 U. S. 270. However, that case loses its authority upon examination of it and the treaties which it construed. That case, as well as all of the other cases upon which the plaintiffs rely must be read in light of Valentine v. Neidecker (1936) 299 U. S. 5, where the court had under discussion the treaty of extradition with France of 1909. The petitioner there was a native-born citizen of the United States. The treaty contained the following language: "Article V. Neither of the contracting parties shall be bound to deliver up its citizens or subjects under the stipulations of this convention," but omitted a clause which had been found in previous treaties reading as follows: "But they shall have the power to deliver them up if in their discretion it be deemed proper to do so." It was argued that the language of the above quoted provision of Article V of the Treaty with France of 1909 by implication carried the power contained in the last quoted clause from previous treaties. As to that contention the Supreme Court held that the representatives of the United States were assumed to have the clauses of the previous treaties before them when they negotiated the treaty

of 1909 with France and that the omission was deliberate." [See page 90.]

It must be assumed, therefore, that when the treaty with Serbia of 1902 was negotiated that the representatives of the United States had before them the clauses of the previous treaties and particularly had before them the clauses in extradition treaties and the treaty involved in Terlinden v. Ames.

The treaty involved in Terlinden v. Ames was the treaty of July 16, 1852, 10 Stat. 964. It provided in Art. 1 thereof as follows: "It is agreed that the United States and Prussia and the other states of the Germanic Confederation included in, or which may [68] hereafter accede to this convention shall" (underscoring supplied) deliver up, etc. It further provided by Art. 2 of that treaty that "The stipulations of this convention shall be applied to any other state of the Germanic Confederation, which may hereafter declare its accession thereto." It is noted that several such accessions were declared and recognized by the United States as will be found by examining the several proclamations following the text of the treaty in 10 Stat. 964. Thereafter, and as a result of the Peace of Prague of 1886 a new North German Confederation came into being and in 1867 the diet of the new North German Confederation proclaimed a constitution which constitution later became the basis of the German Empire. There was negotiated a subsequent treaty, 15 Stat. 615, between Prussia in the name of the North Ger-

man Confederation and the United States in 1868. It is noted that that treaty had a specific provision in it, in Art. 3, which ratified the previous treaty of 1852 in the following language: "The convention for the mutual delivery of criminals, fugitives from justice, in certain cases, concluded between the United States on the one part and Prussia and other States of Germany on the other part, the sixteenth day of June, one thousand eight hundred and fifty-two, is hereby extended to all the States of the North German Confederation."

In 1870 the Franco-Prussian War occurred and during that war, and in April 1871, the Constitution of the German Empire was proclaimed which was substantially the same as that of the North German Confederation previously proclaimed in 1867. So that historically the actual difference between the North German Confederation and the German Empire, so far as the treaties of 1852 and 1868 are concerned, was not much more than the change of name from the North German Confederation to the German Empire.

No provision is found in the treaty with Serbia of 1902, as that which existed in the treaties under consideration in Terlinden v. Ames, extending the terms to additional territory. And it must be assumed that had the parties intended that the extradition treaty [69] with Serbia of 1902 should apply to persons residing in territories which might subsequently come under the jurisdiction or sovereignty of Serbia, that the parties would have specifically stated that in the treaty. The omission can-

not be supplied by either Executive or Judicial construction.

This alone is sufficient in my judgment to compel the conclusion that the treaty of Serbia did not survive the series of events following the first World War so far as to cover Croatia, Bosnia, Herzgovnia, Dalmatia, Montenegro, or any of the territories or peoples within them which became a part of the Serb-Croat-Slovene State when that state was created in 1919.

Furthermore, it is historically highly unlikely that such a provision would have been put in the treaty with Serbia of 1902 in view of the turbulence which had for many years existed in the Balkans, and in view of the then policy of the United States of nonintervention in the internal affairs in Europe. Serbia had long been a part of the Ottoman Empire, having attained complete independence only twenty-two years before in 1878, by the Treaty of Berlin, and declared itself a Kingdom March 6, 1882. At the time of the negotiation of the treaty in 1902, Croatia and Slovenia, Bosnia, Herzgovnia and Dalmatia which later became part of the Kingdom of Serbs, Croats and Slovenes, were a part of the Austro-Hungarian Empire, with a sort of dual sovereignty over Bosnia between Turkey and Austria-Hungary. Turkey ruled Albania, later to be a separate kingdom, as well as Macedonia, later to become a part of Greece.

There had been constant tension, assassinations, insurrections, revolutions, wars, changes in territories and boundary lines, and conflicts of every na-

ture and description going on for several hundred years in the Balkans,"[12] [See page 91] and it is highly unlikely that the United States would at that time have stuck its thumb into the Balkan bees nest with the countenance of any language which could be taken as a suggestion that territory should be taken from Turkey or Bulgaria, or Italy, or the Austro-Hungarian Monarchy, [70] to be ultimately added to Serbia, as was finally done in 1919 at the end of the first World War.

Moreover, the conception that Yugoslavia, as it now exists, is not a new state but merely a continuation of the existence of the old Kingdom of Serbia as it existed prior to 1902, is not justified in the light of the expressions of the times and the events of history following World War I. Reference is made to the statement by Woodrow Wilson on the disposition of Fiume on April 23, 1919.[13] [See page 91.]

Again, in the address to the Senate of the United States on the Versailles Treaty, delivered by Woodrow Wilson on July 10, 1919, he states: "There could be no peace until the whole order of central Europe was set right. That meant that new nations were to be created—Poland, Czecho-Slovakia, Hungary itself. * * * The Slavs whom Austria had chosen to force into her empire on the south were kept to their obedience by nothing but fear. Their hearts were with their kinsmen in the Balkans. These were all arrangements of power, not arrangements by natural union or association. It was the imperative task of those who would make peace and

make it intelligently to establish a new order which would rest upon the free choice of peoples rather than upon the arbitrary authority of Hapsburgs or Hohenzollerns. More than that, great populations bound by sympathy and actual kin to Rumania were also linked against their will to the conglomerate Austro-Hungarian Monarchy or to other alien sovereignties, and it was part of the task of peace to make a new Rumania as well as a new Slavic state clustering about Serbia.""" [See page 91.]

That the events of history support the conception that the Serb-Croat-Slovene State was a new state is evidenced by the division of territories in the Balkans made at the Paris Peace Conference.

In addition to the Treaty of Versailles there were negotiated a number of treaties in 1919 and 1920 to which the Serb-Croat-Slovene State was a party as well as the United States. There was a treaty with Austria (Saint Germain-en-Laye, September 10, 1919); [71] one with Hungary (Trianon, June 4, 1920); the Serb-Croat-Slovene State, (Saint Germain-en-Laye, September 10, 1919); Bulgaria (Neuilly, November 27, 1919); Turkey (Sevres, August 10, 1920); Lausanne (July 24, 1923) and there were others. By these treaties, as well as the Treaty of Versailles" [See page 91] the boundary lines of the Serb-Croat-Slovene State were defined. Territory was taken from Bulgaria, from Austria, from Hungary, and given not only to the Serb-Croat-Slovene State, but territory was also given to Italy as well. In fact, the boundary disputes of the Bal-

kans have been a source of trouble even to the present day.

The treaties with Austria, with Hungary, and with Bulgaria, had similar or identical provisions relating to the Serb-Croat-Slovene State which are exemplified by the language of the Treaty with Austria (Treaties, etc., Vol. 3, 67th Congress, fourth session, Senate Document No. 348, p. 3171.)

"Section II.—Serb-Croat-Slovene State.

Article 46

"Austria, in conformity with the action already taken by the Allied and Associated Powers, recognizes the complete independence of the Serb-Croat-Slovene State.

Article 47

"Austria renounces so far as she is concerned in favour of the Serb-Croat-Slovene State all rights and title over the territories of the former Austro-Hungarian Monarchy situated outside the frontiers of Austria as laid down in Article 27, Part II (Frontiers of Austria) and recognized by the present Treaty, or by any Treaties concluded for the purpose of completing the present settlement, as forming part of the Serb-Croat-Slovene State."

Two treaties with Turkey were involved, one signed at Sevres August 10, 1920 (Senate Document No. 7, 67th Congress) which was reconsidered and reviewed by the Treaty of Lausanne of July 4, 1923 (Records of the Lausanne Conference, His Majesty's Stationery Office, London, 1923.) [72]

Articles 23 and 24 thereof are significant in that

they indicate that the Serb-Croat-Slovene State, as well as the Czecho-Slovak State were new states. Article 23 provided that Turkey recognize the new states as set forth in various treaties and also agreed to "recognize the new states within their frontiers as there laid down." And by Article 24 "recognizes the frontiers of Germany, Austria, Bulgaria, Greece, Hungary, the Serb-Croat-Slovene State and the Czecho-Slovak State as those frontiers have been or will be determined by the treaty referred to in Article 23 or by any supplementary conventions."

The territory which was thus put into the Serb-Croat-Slovene State in addition to Serbia was taken from Austria, from Hungary and the other countries mentioned by force of arms and as a condition of the terms of surrender and of peace with those countries. It was not a voluntary cession by Austria-Hungary or Bulgaria to Serbia such as occurred in Germany after the treaties of 1852 and 1868 considered in Terlinden vs. Ames, supra.

None of these treaties, including the treaty with the Serbs-Croats-Slovenes, was ever submitted to the United States Senate for ratification. An extensive search by counsel, as well as by the author of this memorandum, has turned up little or no material wherein either the President or the State Department communicated to the Senate, or made any public statement concerning the failure to submit them except the general statement that they were all involved with the Treaty of Versailles and all

comprehended the creation of the League of Nations.

European writers on the subject confirm the idea that the Serb-Croat-Slovene State was a new state, for instance, Prof. Erich Kaufman, in the Niemeyers zeitschrift fuer Internationales Recht, XXXI Chapfer, pp. 211-251, observes "Der serbisch-kroatisch-slovenische Staat ein neuer Staat" (the Serb-Croat-Slovene State is a new State.)

A. N. Sack, "Les effets des transformations des Etats sur * * * leurs obligations, * * *" Paris, Sirey, 1927, I, p. 3. The Serb-Croat-Slovene State is shown as a new state. [73]

Manlio Udina, "L 'estinzione dell' Impero Austro-Ungarico nel Diritto Internazionale", 2nd. ed., pp. 288, 303, concludes that the Serb-Croat-Slovene State is a new state.

Paul Guggenheim, "Beitraege zur Voelkerrecht Lichen Lehre vom Staatenwechael (Staatenzuk ession)" 1925, states "The latest practice of states known of one undoubted case of complete state discontinuity * * * where the old states disappeared and a new state arose, i.e., the disappearance of the Kingdom of Serbia (and Montenegro) which was followed by the new-established state of Yugoslavia. Serbia ceased to exist as a subject of international law. * * *"

Prof. Erich Kaufman, in a treatise appearing in Niemeyer's Review of International Law (Zeitserift fuer Internationales Recht), Vol. 31, pp. 211-251, entitled "The Serb-Croat-Slovene State is a new State," on page 47 refers to a note of May

12, 1921 dispatched by the Serb-Croat-Slovene State through its foreign office to the Germany Embassy wherein it was stated "Therefore this legal office (of Foreign Affairs) stresses that, since it was not with the old Kingdom of Serbia that peace was made, but with the new state of the Serb-Croat-Slovene * * *." Thus we have a declaration by the Serb-Croat-Slovene State that it was a new state and not merely a continuity of the Kingdom of Serbia."[15] [See page 91.]

It is significant to note that in the Treaty with the Serb-Croat-Slovene State of September 10, 1919, which was never submitted to the Senate and was never ratified, and thus never came into effect, that Article 12 provides that pending the conclusion of new treaties all the treaties between Serbia and any of the principal and allied powers would ipso facto be binding upon the Serb-Croat-Slovene State.

"Pending the conclusion of new treaties or conventions, all treaties, conventions, agreements and obligations between Serbia, on the one hand, and any of the Principal Allied and Associated Powers, on the other hand, which were in force on the 1st August, 1914, or which have since been entered into, shall ipso facto be binding upon the Serb-Croat-Slovene State." [74]

If these treaties automatically became binding upon the Serb-Croat-Slovene State under the theory now advocated by the demanding government, it would have been entirely unnecessary to have put any such a provision in the treaty.

It is noted in that connection that although the

Treaty of Versailles failed of confirmation, nevertheless a subsequent treaty was concluded with Germany wherein special provision was made for the continuance in force of more than twenty-six treaties specifying them, and the general provision made that the United States had the right to notify Germany of such bilaterial treaties or conventions which it wished to revive with Germany, and that thereafter the United States concluded a new extradition treaty with Germany which was concluded in 1930 and ratified by the Senate in 1931. Similar provisions were included in the treaties with Austria and with Hungary. This is persuasive of the conclusion that it was generally regarded at that time that previous treaties were abrogated unless specifically affirmed or provision made for their affirmation in a treaty ratified by the Senate.

A similar situation existed with relation to Austria-Hungary and similar treaties were made.

Under the authority of and partially paraphrasing the language of Clark v. Allen, supra, all these things are convincing "evidence that the political departments of this government at the time of the collapse and surrender" of the Central Powers at the end of World War I in 1919 considered that the collapse and surrender and the repartitioning of Europe as "putting an end" to all the previous treaties of the countries involved in the war except those specifically designated by the various treaties which were negotiated although not ratified by the United States Government. That is true not only of the political departments of the United States

Government but also all the other governments joining in the series of treaties arising out of the Paris Conference of 1919.

It is not without significance that the government of Yugoslavia first demanded that the United States surrender the petitioner herein as a "war criminal" under resolutions of the United Nations and did not demand petitioner until after the State Department sent a note to the Yugoslav Ambassador suggesting that the treaty of 1902 was in [75] force." [See page 92] This is not conclusive but it is persuasive that the present Yugoslav Government did not regard the exchange of notes of December 1945 and April 1946 as binding it to that treaty.

For all of these reasons it is my conclusion that the Treaty between the United States and the Kingdom of Serbia of 1902 is not now in force and effect between the United States and the country now known as Yugoslavia.

In view of the fact that I find no treaty is in existence it is unnecessary to give consideration to whether or not the complaint on its face shows the alleged offenses to be "of a political character."

Subdivision 3 of Rule 45 of Rules of the Supreme Court provides as follows:

"3. Pending review of a decision discharging a prisoner on habeas corpus, he shall be enlarged upon recognizance, with surety, for his appearance to answer and abide by the judgment in the appellate proceeding; and if in the opinion of the court or judge rendering the decision surety ought not

to be required the personal recognizance of the prisoner shall suffice."

At the time the bail was fixed, as indicated by my remarks from the bench set forth in full in Footnote No. 4, it then seemed to me that the bail of $50,000 was excessive. I adhere to that view now and see no reason to require this defendant to raise and place such an excessive bail, particularly in view of my holding concerning the non-existence of a treaty and that there is grave doubt as to whether or not the indictment on its face shows the alleged offenses to be extraditable as not being "of a political character" even though that question is not now necessary of decision.

It is, therefore, ordered that the petitioner be released and his bail is set in the sum of $5,000.

The within memorandum will suffice as findings of fact and conclusions of law. The petitioner will prepare formal judgment.

Los Angeles, California, July 14, 1952.

/s/ PEIRSON M. HALL,
Judge. [76]

FOOTNOTES

[1] Sec. 3181. Scope and limitation of chapter.
The provisions of this chapter relating to the surrender of persons who have committed crimes in foreign countries shall continue in force only during the existence of any treaty of extradition with such foreign government.

Sec. 3184. Fugitives from foreign country to United States.

Whenever there is a treaty or convention for

extradition between the United States and any foreign government, any justice or judge of the United States, or any commissioner authorized so to do by a court of the United States, or any judge of a court of record of general jurisdiction of any State, may, upon complaint made under oath, charging any person found within his jurisdiction, with having committed within the jurisdiction of any such foreign government any of the crimes provided for by such treaty or convention, issue his warrant for the apprehension of the person so charged, that he may be brought before such justice, judge, or commissioner, to the end that the evidence of criminality may be heard and considered. If, on such hearing, he deems the evidence sufficient to sustain the charge under the provisions of the proper treaty or convention, he shall certify the same, together with a copy of all the testimony taken before him, to the Secretary of State, that a warrant may issue upon the requisition of the proper authorities of such foreign government, for the surrender of such person, according to the stipulations of the treaty or convention; and he shall issue his warrant for the commitment of the person so charged to the proper jail, there to remain until such surrender shall be made. [77]

Sec. 3188. Time of commitment pending extradition.

Whenever any person who is committed for rendition to a foreign government to remain until delivered up in pursuance of a requisition, is not so delivered up and conveyed out of the United States within two calendar months after such commitment, over and above the time actually required to convey the prisoner from the jail to which he was committed, by the readiest way, out of the United States, any judge of the United States, or of any State, upon application made to him by or on behalf of the person so committed, and upon proof made to him that reasonable notice of the intention to make such application has been given to the

Secretary of State, may order the person so committed to be discharged out of custody, unless sufficient cause is shown to such judge why such discharge ought not to be ordered.

Sec. 3189. Place and character of hearing.

Hearings in cases of extradition under treaty stipulation or convention shall be held on land, publicly, and in a room or office easily accessible to the public.

Sec. 3190. Evidence on hearing.

Depositions, warrants, or other papers or copies thereof offered in evidence upon the hearing of any extradition case shall be received and admitted as evidence on such hearing for all the purposes of such hearing if they shall be properly and legally authenticated so as to entitle them to be received for similar purposes by the tribunals of the foreign country from which the accused party shall have escaped, and the certificate of the principal diplomatic or consular officer of the United States resident in such foreign country shall be proof that the same, so [78] offered, are authenticated in the manner required.

Sec. 3195. Payment of fees and costs.

All costs or expenses incurred in any extradition proceeding in apprehending, securing, and transmitting a fugitive shall be paid by the demanding authority.

All witness fees and costs of every nature in cases of international extradition, including the fees of the commissioner, shall be certified by the judge or commissioner before whom the hearing shall take place to the Secretary of State of the United States, and the same shall be paid out of appropriations to defray the expenses of the judiciary or the Department of Justice as the case may be.

The Attorney General shall certify to the Secretary of State the amounts to be paid to the United States on account of said fees and costs in extradi-

tion cases by the foreign government requesting the extradition, and the Secretary of State shall cause said amounts to be collected and transmitted to the Attorney General for deposit in the Treasury of the United States. [79]

[1]October 12 and 25, 1901. Treaty between the United States and Servia for the mutual extradition of fugitives from justice. Signed at Belgrade, October 25, 1901; ratification advised by the Senate, January 27, 1902; ratified by the President, March 7, 1902; ratified by Servia, March 17, 1902; ratifications exchanged at Belgrade, May 13, 1902; proclaimed May 17, 1902.

By the President of the United States of America.

A Proclamation

Preamble. Whereas a Treaty between the United States of America and Servia providing for the extradition of fugitives from justice was concluded and signed by their respective Plenipotentiaries at Belgrade on the twenty-fifth (twelfth) day of October, one thousand nine hundred and one, the original of which Treaty, being in the English and Servian languages, is word for word as follows:

Contracting Parties. The United States of America and His Majesty the King of Servia, being desirous to confirm their friendly relations and to promote the cause of Justice, have resolved to conclude a treaty for the extradition of fugitives from justice between the United States of [80] America and the Kingdom of Servia, and have appointed for that purpose the following Plenipotentiaries:

Plenipotentiaries. The President of the United States of America, Charles S. Francis, Envoy Extraordinary and Minister Plenipotentiary to His Majesty the King of Servia.

His Majesty the King of Servia, M. Michel V. Vouitch, President of His Council of Ministers, Minister for Foreign Affairs, Senator, Grand Officer of the Order of Milosh the Great, Grand Cross

of the Order of Takovo, Officer of the Order of the White Eagle, etc, etc., who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following articles:

Article I.

Reciprocal delivery of persons charged with crimes. The Government of the United States and the Government of Servia mutually agree to deliver up persons who, having been charged with or convicted of any of the crimes and offenses specified in the following article, committed within the jurisdiction of one of the high contracting parties, shall seek an asylum or be found within the territories of the other: Provided, that this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would [81] justify his or her apprehension and commitment for trial if the crime or offense had been committed there.

Article II.

Extraditable crimes, Murder, etc. Extradition shall be granted for the following crimes and offenses:

1. Murder, comprehending assassination, parricide, infanticide, and poisoning; attempt to commit murder; manslaughter, when voluntary.

* * * * *

Extradition is also to take place for participation in any of the crimes and offenses mentioned in this Treaty, provided such participation may be punished in the United States as felony and in Servia as crime or offense as before specified..

Article III.

Requisitions for the surrender of fugitives from Justice shall be made by the Governments of the high contracting parties through their diplomatic agents, or in the absence of such through their respective superior consular officers.

If the person whose extradition is requested shall have been convicted of a crime or offense, a duly authenticated copy of the sentence of the Court in which he has been convicted, or if the fugitive is merely charged with crime, a duly authenticated copy of the warrant of [82] arrest in the country where the crime has been committed, and of the depositions or other evidence upon which such warrant was issued, shall be produced.

Proceedings. The extradition of fugitives under the provisions of this Treaty shall be carried out in the United States and in Servia, respectively, in conformity with the laws regulating extradition for the time being in force in the State on which the demand for surrender is made.

* * * * *

Article VI.

No surrender for political offenses. A fugitive criminal shall not be surrendered if the offense in respect of which his surrender is demanded be of a political character, or if he proves that the requisition for his surrender has, in fact, been made with a view to try or punish him for an offense of a political character.

Political offenses prior to extradition. No person surrendered by either of the high contracting parties to the other shall be triable or tried, or be punished, for any political crime or offense, or for any act connected therewith, committed previously to his extradition.

Decision. If any questions shall arise as to whether a case comes within the provisions of this article, the decision of the authorities of the Government on which the demand for surrender is made, or which may have granted the extradition, shall be final. [83]

[1]Title 18 U.S.C.A. Section 3141.

"§3141. Power of courts and magistrates.

Bail may be taken by any court, judge or magis-

trate authorized to arrest and commit offenders, but in capital cases bail may be taken only by a court of the United States having original or appellate jurisdiction in criminal cases or by a justice or judge thereof. June 25, 1948, c. 645, 62 Stat. 821."

"'The Court:

1. The only thing I am giving consideration to now, is the matter of granting bail pending the final hearing and determination on the petition for the writ of habeas corpus. * * *" Transcript, page 217, lines 7-10.

"I think, as all counsel have agreed, the rule is probably stated in Wright vs. Henkel to be that ordinarily bail should not be granted in cases of foreign extradition and that they may do so, if at all, only in cases where there are special circumstances.

The decision to be made here is the matter of the judgment of this court and my discretion as to finally whether or not he will appear as ordered by this court. So far as the special circumstances are concerned, I think that they exist here. I am impressed by the date of the alleged offenses, 1941; and the fact that Yugoslavia was invaded by Germany on April 6, 1941, and thereafter occupied by Germany until 1945 and that the whole world and especially that portion of the world, was in a terrible turmoil.

I certainly do not want to have this taken as an indication of any ultimate judgment, but I cannot help but think that it might be possible, if extradition treaties with various countries were carried out to the [84] letter in connection with charges that might be made, they might demand the extradition of every person who was a member of any armed forces against them and charge them with having committed murder, because surely people who are members of armed forces do kill other people, and they kill them just as dead as they would if they

privately did it and certainly with as much intention.

Another reason that I think there is a special circumstance here, which is existent at this time, is the lack of a direct charge in the complaint which is filed with the Commissioner. It is not a direct charge that he did commit murder, but says that he is informed that there is a charge made of having murdered or caused to be murdered. I searched the treaty in vain for any offense defined as "causing murders".

However, I do not wish to be understood as finally passing on that, but I indicate it merely as something that has some very slight weight.

Another special circumstance is the fact that while he came to this country under an assumed name, shortly after his arrival and as early as January 1949 he disclosed his true identity to the State Department, also the introduction of the bill in Congress, I think in May of that year, or March 11, 1949, wherein his true identity is disclosed, as well as disclosure made that he came into this country under the name of Anich instead of under his true name. It was well known to the State Department and presumably well known to the Yugoslavian officials.

Since that time and since he came to California he has lived openly and notoriously under his true name. His wife and his children likewise have lived openly and notoriously under their true names. His children have been attending school under their true names. So there has been no concealment of his identity here and no continued [85] concealment, and there was a revelation of his true identity long before any demand was made, according to the evidence presently before me, for his extradition to Yugoslavia.

Another special circumstance is the fact that on March 31 of this year a demand was made on the State Department for his return to Yugoslavia as

a war criminal, and it was after that that deportation proceedings were instituted, so that the Government of the United States knew—and I apprehend that it is a fair inference, knowing as much as I know about the operations of the Government—that probably the institution of the deportation proceedings was agitated or commenced at the suggestion of the Yugoslavian government, who then certainly knew that he was in the United States and who he was and where he was.

Another special circumstance of very great significance is the fact that the knowledge of the Government of the United States, and with the knowledge and the presumptive and inferred knowledge of the Yugoslavian government, the demanding government, that he was here, that a bond in the sum of $1000 was fixed to permit his release on bail in the deportation proceedings.

I have seen the defendant on the witness stand. I have had an opportunity to observe him. I called the pastor of his church, not for the purpose of ascertaining whether or not the defendant attended church, but because it seemed to me that if he did attend church and if he did discuss these matters of his life and his conscience with his pastor, that the pastor would be able to have some independent appraisal of his character. From seeing the petitioner on the witness stand, I am impressed with his sincerity and with his honesty and I am of the firm conviction that I do not believe that the petitioner will fail to respond to an order of this court to return here [86] at any designated date.

Moreover, one additional circumstance, a matter that a person must take into consideration when exercising judgment such as is my responsibility at this time, is the fact that the defendant has a wife and four children here. And another one is probably that here, in this country and in this proceeding, is his only chance for vindication of what he has conceived to be his efforts to advance his own ideas for the welfare of his native land.

I am therefore going to make an order enlarging him on bail. I will now fix the time. How long will you want for briefs?

What I had in mind was that I would require each side to file opening briefs simultaneously and then give each side five days to reply to the other. Can you conclude them in ten days or fifteen days?

Mr. O'Connor: Fifteen days, your Honor.

Mr. Walker: I am trying to add time ahead here so as not to get ahead of his October 22nd date.

The Court: That will be a total of 20 days.

Mr. Walker: As long as it is before October 22nd, it would be entirely satisfactory. Yes, that would make our brief due about the 3rd or 4th of October.

The Court: Each party may have until October 4th at 5:00 o'clock to file simultaneously opening briefs, and each party may thereafter have until October 9th—I think instead of October 4th I will make that date October 1st, Monday, to file simultaneous opening briefs. You will then have until October 4th—that is three days—to file reply briefs, and the hearing is continued to and set for October 8, Monday, at 10:00 o'clock in the morning.

Now as to the amount of bail. The petitioner suggested $50,000 bail. It seems to me to be a rather large sum in view of the $1000 bail set in the immigration proceedings. [87] However, in view of the fact that it was suggested by petitioner's counsel, I think that that should be the amount of bail.

I will therefore fix the bail of the defendant at $50,000 and I will indicate to counsel that I will not approve a corporate bail in this case. It must either be a private bail qualified before the Commissioner or cash bail deposited by private persons.

Mr. Walker: The conditions of the bail will be the usual ones in a criminal case?

The Court: The conditions will be that the petitioner will return here on October 8, 1951, that he shall not leave the jurisdiction of this court in the

meantime, and that after October 8, 1951, he shall thereafter respond to all further orders of the court which may be made in or about or in connection with these proceedings.

The condition of the bail will provide that it shall be forfeited to the respondent, the United States of America, or James J. Boyle, United States Marshal, as the appropriate official of the United States.

(This marginal footnote was taken from the transcript of proceedings of September 17, 19, 1951, pages 217, lines 7-10, and Page 219, line 23 through page 225, line 8.) [88]

[88] Department of State Bulletin, Vol. XIII, No. 339, p. 1020. "Recognition of New Yugoslavia Regime. [Released to the press December 22.]

Instruction sent to the American Ambassador in Belgrade.

The Yugoslavia Ambassador on December 10 transmitted to the Secretary of State the following communication:

'The Ambassador of Yugoslavia presents his compliments to the Honorable the Secretary of State and has the honor to notify the Government of the United States of America that the Yugoslav Constituent Assembly in the session of the 29th of November 1945, in accordance with the freely expressed will of the peoples of Yugoslavia, in the name of the people and in the name of the legal decisions taken by both houses of the Constituent Assembly, proclaimed Democratic Federative Yugoslavia a people's republic with the name "Federative People's Republic of Yugoslavia." By the same decision the monarchy has been abolished and Peter Karadjordjevic together with the entire Karadjordjevic dynasty deprived of all rights previously vested in him and in his dynasty.

'On the 1st of December, 1945, the Constituent Assembly enacted the law of the Presidium of the Constituent Assembly. Under this law the Presidium of the Constituent Assembly is elected by both

houses and consists of one president, six vice presidents, two secretaries and a maximum of thirty members. According to paragraph three of said law the Presidium, among other executive functions, represents inside and outside the country, the sovereignty of the people and of the state as the Federative People's Republic of Yugoslavia. The Presidium appoints the ambassadors, plenipotentiary ministers and extraordinaire envoys to foreign countries at the proposal of the Federative Government. The Presidium [89] receives the credentials of the diplomatic representatives of foreign countries. According to paragraph six, when the Constituent Assembly becomes the regular Assembly the Presidium of the Constituent Assembly ipso facto becomes the Presidium of the regular Assembly. This law became effective on adoption by the Constituent Assembly the 1st of December, 1945.

'In accordance with this law, the Presidium of the Constituent Assembly was elected as follows: President: Ivan Rybar, former president of the Provisional Assembly; Vice Presidents: Mosa Pijade, Filip Lakus, Josip Rus, Djuro Pucar, Dimtri Vlahov and Marko Vujacic; Secretary: Mile Perunicic.'

The following reply dated December 22 has now been communicated to the Ambassador:

'The Acting Secretary of State presents his compliments to His Excellency, the Ambassador of Yugoslavia and has the honor to inform the Ambassador that the United States Government, having taken note of the contents of the Ambassador's communication no. A. Br. 1070 of December 10, 1945, recognizes the changes which have taken place in the constitution of Yugoslavia and the establishment of a republic under the name "Federative People's Republic of Yugoslavia" in accordance with decisions of the Constituent Assembly referred to therein.

'It is assumed that, pursuant to international custom, the new Yugoslavia Government will, as a member of the family of nations and as one which

has subscribed to the principles of the Declaration by the United Nations, accept responsibility for Yugoslavia's international obligations, and be disposed to confirm its continued recognition of the existing treaties and agreements between the United States and Yugoslavia. Upon receipt of assurances in this sense, the United States Government is prepared to proceed with the issuance of appropriate letters of credence accrediting the United States [90] Ambassador in Belgrade to the new Yugoslav regime.'

Mindful of the obligations which it assumed at Yalta, the United States Government has consistently made known its attitude that the people of Yugoslavia are entitled to expect the effective implementation of the guarantees of personal freedom, freedom from fear, liberty of conscience, freedom of speech, liberty of the press and freedom of assembly and association contained in the agreement between Marshal Tito and Dr. Subasic underlying the Yalta Declaration and to have an opportunity to express their will in a free and untrammeled election. In view of conditions existing in Yugoslavia, it cannot be said that those guarantees of freedom have been honored nor that the elections conducted on November 11 provided opportunity for a free choice of the people's representatives. In the circumstances the United States Government desires that it be understood that the establishment of diplomatic relations with the present regime in Yugoslavia should not be interpreted as implying approval of the policies of the regime, its methods of assuming control or its failure to implement the guarantees of personal freedom promised its people. You should make it quite clear to the authorities and people of Yugoslavia that we entertain only the friendliest sentiments toward the peoples of the country and that it is our anticipation that the evolution of events will provide developments which will make possible those relations—both political and economic—between the peoples of Yugoslavia and the United States which we on our part most urgently desire to see.". [91]

Department of State Bulletin, Vol. XIV, No. 356, p. 728. "Establishment of Diplomatic Relations with Yugoslavia Notes from the Secretary of State to the Yugoslavia Charge d' Affaires. [Released to the press April 17.]

The following two communications were delivered to the Yugoslav Charge d' Affaires ad interim on April 16, 1946.

'The Secretary of State presents his compliments to the Charge d' Affaires ad interim of the Federal People's Republic of Yugoslavia and acknowledges receipt of the latter's communication No. 407 of April 2, 1946 in which, acting upon instructions, the Charge d' Affaires informed the Secretary of State that "the Government of the Federal People's Republic of Yugoslavia, after having studied all the questions concerning the recognition of Yugoslavia's international obligations in conformity with the decisions of the Second Session of the Anti-Fascist Council of National Liberation in Jajce in November, 1943, hereby gives an affirmative answer to the note of the Department of State of December 22, 1945, concerning the international obligations of the former Yugoslav Governments."

'The Secretary of State is gratified to receive this assurance that the Federal People's Republic of Yugoslavia confirms its continued recognition of the existing treaties and agreements between the United States and Yugoslavia and accordingly, pursuant to his communication of December 22, 1945 referred to above, requests that the Charge d'Affaires inform the Yugoslav Government that the United States Government is now prepared to proceed with the issuance of appropriate letters of credence accrediting the United States Ambassador to the Federal People's Republic of Yugoslavia.'

'Sir: I refer to your note of March 1, 1946 in which you state that the Yugoslav Government desires to appoint Mr. Sava N. Kosanovic as Ambassador Extraordinary and Plenipotentiary of Yugoslavia to the United States.

'The appointment of Mr. Kosanovic in the above-

mentioned capacity is agreeable to this Government.

'Accept [etc.]

James F. Byrnes' "

'No. 4096.

The Ambassador of the Federal People's Republic of Yugoslavia presents his compliments to the Honorable the Secretary of State and has the honor to refer to the note of his predecessor of July 23, 1946, No. 1034 concerning the extradition of certain war criminals of Yugoslav origin.

In the mentioned note was requested, among others, the extradition of Dr. Andrija Artukovic, former Minister of Interior in the Quisling Ustashi Government, created by the Axis Powers in Croatia during the war. At the time of presenting the note Dr. Artukovic was believed to be somewhere in occupied Austria or Italy.

According to latest available information the present whereabouts of the mentioned war criminal is in Los Angeles, California, U.S.A., where he is employed with the road construction enterprise "P & I Artukovic Co., Inc." 13305 San Pedro Street or "General Contractors," 1335 South Avalon Avenue, both in Los Angeles, California. In addition, his private address is 62 Surfside Colony, Long Beach, California. Living in Los Angeles, unhidden, under his true name, Dr. Artukovic, in the capacity of employee of the said companies, signs checks by his full name.

The mentioned Dr. Andrija Artukovic has been proclaimed a war criminal for the following crimes: betrayal of the people; assassinations and massacres; looting; large-scale torturing and ill-treatment in concentration camps; organization of armed struggle against the Allied and the National Liberation Army of Yugoslavia; military, political and economic collaboration with, and service rendered to, the enemy. This will be seen from the enclosed "Decision on the Ascertainment of Crimes of Invader and Its Helpers" Zh. No. 9548, 6166, F. No.

3371/II of the Federal State of Croatia Land Commission for the Ascertainment of Crimes of the Invader and Its Helpers of [94] December 1, 1945, confirmed by the State Commission of Yugoslavia for the Ascertainment of Crimes of the Invader and Its Helpers of December 27, 1945.

In view of the fact that Dr. Andrija Artukovic has been one of the most notorious war criminals, responsible for innumerable and unheard-of crimes committed upon the people of Yugoslavia during the last war, the Ambassador of the Federal People's Republic of Yugoslavia has the honor to reiterate the request that immediate steps be taken by the United States authorities with a view to apprehending the said war criminal and handing him over to the Yugoslav authorities for trial and punishment, well deserved long ago.

In reiterating this request the Ambassador of the Federal People's Republic of Yugoslavia is confident that the United States Government, guided by the principles of the inter-Allied Decisions during the last war, and especially by the Moscow Declaration of October, 1943, on Bestialities, as well as by the General practice internationally adopted in similar cases, will undertake all the steps necessary to hand over this notorious war criminal to the Yugoslavia authorities and, thus, help put him on trial in the country where he committed his abominable crimes.

The Ambassador of the Federal People's Republic of Yugoslavia avails himself of this opportunity to renew to the Honorable the Secretary of State the expression of his highest esteem.

Washington, D. C., March 31, 1951.

The Honorable The Secretary of State
Washington, D. C. [95]

The Secretary of State presents his compliments to His Excellency the Ambassador of the Federal People's Republic of Yugoslavia and has the honor to acknowledge the receipt of the Ambassador's note no. 4096 dated March 31, 1951, and of its enclosure,

in which the request is made that immediate steps be taken by the United States authorities with a view to apprehending Dr. Andrija Artukovic, and to handing him over to the Yugoslav authorities for trial and punishment.

The Ambassador is informed that as a result of the circumstances attending Dr. Artukovic's entry into and continued stay in this country proceedings have been instituted in the United States with a view to his deportation. If the deportation of Dr. Artukovic is not effected, the Secretary of State will be pleased to give consideration, after the necessary forms of law have been complied with, to a request from the Ambassador for the extradition of the accused pursuant to the provisions of the Extradition Treaty of October 25, 1901, in force between the United States and Yugoslavia. In this connection it is pointed out that, in accordance with the provisions of Title 18, U.S.C. sec. 3184, extradition from the United States can be effected only on the basis of a treaty or convention of extradition.

Department of State,
Washington, May 14, 1951.

The Department of State refers to its note dated May 14, 1951, in the matter of the desired extradition to Yugoslavia of Dr. Andrija Artukovic.

It is pointed out for the information of the Embassy of the Federal People's Republic of Yugoslavia that it was not intended by the note under reference to imply that it would be necessary for the Embassy to await the outcome of the deportation proceedings instituted against Dr. Artukovic before making [96] a formal request for the extradition of the accused or before a warrant could be obtained for the provisional arrest and detention with a view to the extradition of the accused. The formal request for the extradition of Dr. Artukovic may be filed at any time and, acting in accord with the provisions of Title 18, U.S.C., Section 3184, a duly authorized representative of the Yugoslavia Government, possibly one of its Consular officers in the United States, could be at liberty to swear out a

warrant for the arrest of the accused with a view to his extradition notwithstanding that deportation proceedings are pending. The Department of State cannot give any assurance, however, as to what action may be taken following the issuance of such a warrant of arrest since that will be within the jurisdiction of the judicial branch of the Government.

Finally, the Department of State wishes to point out that except for the possible receipt by it of a formal request for extradition pursuant to the treaty of October 25, 1901, in force between the United States and Yugoslavia, it is without authority to act in the matter until it shall have received from the extradition magistrate a transcript of the proceedings in the hearing required by Title 18, U.S.C., Section 3184.

Department of State, Washington, May 21, 1951.
611.6826/3-3151 [97]

"Messages and Papers of the Presidents." Vol. XVII, p. 8421, address to Congress, Jan. 8, 1918.

"The program of the world's peace, therefore, is our program, the only possible program, as we see it, is this: I—open covenants of peace, openly arrived at, after which there shall be no private international understandings of any kind, but diplomacy shall proceed always frankly and in the public view."

*Karnut vs. United States, Ex rel Albro, 279 U.S. 231 (1929) 2d Cir., Extradition to Canada under the Jay Treaty with Great Britain made in 1794.

The Court held that the War of 1812 abrogated the treaty, citing 8 Wheaton 464, in certain aspects, but it was not abrogated if it dealt with property, that is, permanent rights to property, but was abrogated in connection with its terms relating to immigration, even though until the question was raised, people had passed freely between Canada and the United States. [98]

*In connection with the historical matters referred to in this memorandum reference has been made to the following:

New International Encyclopedia, Second Edition, 1915; Encyclopedia Britannica, Editions 1902, 1929, and 1952 (Serbia; Yugoslavia; Balkan Peninsula; Croatia; Bosnia; Herzgovnia; Austria-Hungary; Germany; Turkey; Bulgaria.) Universial Encyclopedia & Atlas, Appleton & Co., 1903; Foreign Relations of the United States, 1919, Vol. II; The Treaty of Versailles and After, as published by the State Department, 1947, Department of State Publication No. 2724; Messages and Papers of the Presidents, published by Bureau of National Literature, Inc.; Report of the Committee on Foreign Relations of the Senate of the United States, dated September 10, 1919; Select Constitutions of the World by Dail E. Ureann, 1922; Esson & Son, Dublin; League of Nations Journal, 1920, No. 8, Senate Document No. 7, 67th Congress, First Session; Foreign Relations of the United States, 1919, Vol. II, Pub. No. 661, p. 892 et seq. [99]

[99] Foreign Relations of the United States, 1919, Vol. II, Publication No. 661, Department of State, Government Printing Office, 1934.

"Yugoslavia

"Recognition by the United States of the Kingdom of the Serbs, Coats and Slovenes, February 7, 1919

860h.01/23

The Serbian Charge' (Simitch) to the Secretary of State.

No. 176 Washington, Nov. 11, 1918

Your Excellency: I have the honor to inform Your Excellency that the Serbian Government has recognized the National Council in Zagreb as the legitimate representative of the Serbians, Croatians, and Slovenes who are residing within the boundaries of the former Austro-Hungarian Monarchy until the definite organization of one state which will comprise all Serbians, Croatians and Slovenes, when the

Serbian Government and the National Council will create one common government who will protect the rights of the nation of all Serbians, Croatians and Slovenes.

Until the organization of this Government Mr. Troumbitch, President of the Jugoslav Committee in London, has been entrusted with the mandate to represent the National Council in Zagreb with the Allied Governmen[illegible].

In bringing the above to the knowledge of Your Excellency I beg to present that the Serbian Government anticipates that the United States Government will recognize the National Council in Zagreb, the members of whom have been elected by the parliament, as the legitimate government of the Jugoslavs (Serbians, Croatians and Slovenes), living within the boundaries of the former Austro-Hungarian Monarchy, and consider that [100] government and its army as an ally.

With renewed assurance [etc.]

Y. Simitch

860h.01/21

The Serbian Charge' (Simitch) to the Acting Secretary of State—[Translation[

Washington, undated

[Received January 6, 1919]

Mr. Secretary: I am instructed by my Government to submit herewith the following communication:

In accordance with the decison of the Central Committee of the National Council of Zagreb which represents the State of all the Serbian Croatian and Slovene provinces within the boundaries of the former Austro-Hungarian Monarchy, a special Delegation has arrived at Belgrade on the 1st of December. This Delegation by one [a] solemn address, presented to His Highness the Crown Prince, has proclaimed the Union of all the Serbian Croatian and Slovene provinces of the former Dualist Monarchy into one single State with the Kingdom of Serbia under the Dynasty of His Majesty King Peter and under the regency of the Crown Prince

Alexander. In the reply to this address His Royal Highness the Crown Prince has proclaimed the Union of Serbia with the above mentioned independent State of Slovenes, Croats and Serbs into one single Kingdom of the Serbs, Croats and Slovenes." His Highness has accepted the regency and will form a common Government. On the 17th of December His Royal Highness the Crown Prince received in audience a delegation from Montenegro. This Delegation has submitted to His Highness on the 26th of November the decisions of the Great National Assembly of [101] the Kingdom of Montenegro. By virtue of these decisions His Majesty King Nikolas I, and His dynasty have been declared destitute of all the rights upon [to] the throne of Montengro and the Kingdom of Montenegro, united to Serbia under the dynasty of Karageorgevitch, is included in the Kingdom of the Serbs, Croats and Slovenes. His Royal Highness the Crown Prince has declared He accepts with pleasure and thanks these decisions. A common Government for the new Kingdom has been organized on the 21st of December. The Legations, Consulates and other Missions of the Kingdom of Serbia will be the Legations, Consulates and other Missions of the Kingdom of the Serbs, Croats and Slovenes.

Bringing the above to the knowledge of the United States Government, the Serbian Government is strongly convinced that their communication will be met sympathetically: The Union of all the nations of the Serbs, Croats and Slovenes in one single state, which results from the imprescriptible right of the people to dispose of their destiny.

I take [etc.]

Y. Simitch

860h.01/29

The Charge' in Yugoslavia (Dodge) to the Acting Secretary of State

No. 147 Belgrade, Jan. 10, 1919

[Received February 11]

Sir: I have the honor to enclose to you herewith a clipping from the Pravda of the 26th December/8th

January giving the text of a proclamation addressed on Christmas Day, old style, by the Prince Regent to the Serb, Croat and Slovene people. I also enclose a translation which I made from a French translation of this proclamation.

The proclamation will be found to be of considerable [102] interest as it outlines the future plans of the Government. These in general outline have already been reported, especially in my Despatch No. 137 of December 24th. After referring to the final union of the Serbs, Croats and Slovenes in a single Kingdom by the unanimous wish of the people, and mentioning the representative character of the present Cabinet composed of men of all the political parties, regions, and creeds of the new State, the proclamation describes the composition of the provisional body which under the name of "National Council" is to act as a national parliament until a parliament is elected under the Constitution to be framed by the Constitutional Convention. It will be noted that this Council is to include delegates of the various National Councils which exist in each of the Yugoslav provinces of the former Austro-Hungarian Empire and delegates from the Banat and Batschka (the Voivodina). It will also include, from Serbia proper, in addition to delegates of the Skupschtina, delegates from the territories of Old Serbia and Macedonia which were acquired during the Balkan wars. It will be remembered that these territories, while annexed to Serbia, were placed under a special regime and were not allowed to be represented in the Skupschtina. This regime is in fact generally acknowledged to have been harsh and meddlesome.

The proclamation then declares that the cornerstone of the new State and its liberties will be constitutional and parliamentary Government and that the Constitutional Convention will be elected upon a basis of universal suffrage. The Cabinet will submit to the Constitutional Convention a draft for a democratic Constitution on the basis of a unified State with extensive local autonomies and the strict-

est guaranties for political and personal rights. The future Government is not to be a federal one but a strongly unified State with [103] local autonomies. As formerly reported, there appears to have been from the beginning little popular sentiment in favor of a federal form of Government although it is generally stated that local autonomy in the new State will be more extensive than it has been in Serbia. The chief reason given for desiring a centralized State is in order that it may be stronger in a military sense as it will have enemies in Germany and Hungary.

All the liberties and rights now given to the population of Serbia by its Constitution are to be extended over all the new Kingdom. This will be a distinct democratic gain in the former Austro-Hungarian provinces where much of the present legislation is aristocratic and even feudal in character. This is especially true in Croatia and especially as regards the land laws which favor large estates. Many of these are of vast extent (as those of the Odescalchi family) and the peasants living in them are little better than serfs. The recent unrest in Croatia is largely economic in character and owing to the desire of the peasants to acquire the land which they till. In Serbia the reverse is the case and in fact the whole country is one of peasant proprietors.

The proclamation also refers to the duty of the Government to relieve the present distress, to care for the victims of the war and to reconstruct the country. It calls upon the people to forget their differences and to trust and support the Government in order that the Government may inspire confidence abroad and be able to obtain its true ethnographic frontiers. In describing the extent of these frontiers "unquestioned sovereignty" is mentioned "from one end to the other of our sea." This phrase may be considered somewhat unfortunate but from what I have been told by persons in authority, it should in no way be taken as signifying more [104] than a desire for the ordinary rights of a nation having a sea-coast.

I have been assured lately by several prominent political men, including the Acting Minister for Foreign Affairs, Dr. Gavrilovitch, that the Cabinet is strongly opposed to including in the Kingdom any territories not peopled by Serbs, Croats and Slovenes, especially owing to the danger which this would cause to the Kingdom. Where this appears to be a necessity, as in the case of the Italian populations of Fiume and Zara, the fullest educational and language liberties would be given.

Certain of the measures mentioned in the Prince Regent's proclamation have already been executed. The National Council has already been chosen and is expected to meet about March 1st. The Skupschtina which has held a short session, has elected the Serbian delegates and adjourned, presumably to meet no more. A special Ministry has been appointed for preparing for the coming Constitutional Convention, as has already been reported, and is stated to be already engaged in drafting an electoral law for this Convention and considering plans for a Constitution. A decree has already been published extending to all the Kingdom the rights and liberities enjoyed in Serbia. Regarding the relief of the indigent population and reconstruction however, little has yet been done. Lack of funds is partly responsible for this, lack of efficient administrative personnel and a certain weariness and demoralization after six years of exhausting warfare. The Croatians show more ability in such measures than the Serbs, owing to their having suffered less and possessing more administrative ability. It is however a herculean task and it is especially unfortunate that it must be accomplished at a time when so many matters of [105] absorbing political importance are forcing their solution. Without substantial foreign assistance, proper relief and reconstruction will be beyond the Government's powers.

While adding that I have sent a copy of this Despatch to the Secretary of State in Paris, I have [etc.].

H. Percival Dodge

Yugoslavia

860h.01/26: Telegram 899

The Commission to Negotiate Peace to the Acting Secretary of State

Paris, February 6, 1919, 4 p.m.
[Received February 7, 1.32 a.m.]

622. The Secretary of State will give out on February 7th the following statement in regard to the union of the Jugo Slav peoples, which you may give out to the press immediately:

"On May 29, 1918, the Government of the United States expressed its sympathy for the nationalistic aspirations of the Jugo Slav. race and on June 28 declared that all branches of the Slavish race should be completely freed from German and Austrian rule. After having achieved their freedom from foreign oppression the Jugo Slav[s] formerly under Austria-Hungarian rule on various occasions expressed the desire to unite with the Kingdom of Serbia. The Servian Government on its part has publicly and officially accepted the union of the Serb, Croat and Slovene peoples. The Government of the United States, therefore, welcomes the union while recognizing that the final settlement of territorial frontiers must be left to the Peace Conference for determination according to desires of the peoples concerned."

All this statement has been transmitted Mr. Trumbitch [106] and telegraphed to Dodge at Belgrade.

Am[erican] Mission

860h.01/21

The Acting Secretary of State to the Yugoslav Minister (Grovitch)

No. 2 Washington, February 10, 1919

Sir: I have the honor to acknowledge the receipt of an undated Note from the Serbian Charge d' Affaires stating that in accordance with a decision of the Central Commitee of the National Council of Zagreb, representing the State of all the Serbian, Croatian and Slovene provinces within the boun-

dairies of the former Austro-Hungarian Monarchy, the Serbian Crown Prince has proclaimed the union of all the Serbian, Croatian and Slovene provinces of the former Dualist Monarchy with the Kingdom of Serbia in a single state all under the title of "Kingdom of the Serbs, Croats and Slovenes" under the rule of His Majesty King Peter and the regency of the Crown Prince Alexander.

The Department further notes the statement contained in the Note that in accordance with the decision of a body proclaiming itself the Great National Assembly of the Kingdom of Montenegro, His Majesty King Nikolas I, and His dynasty, had been deposed from the throne of that country and had decreed the union of Montenegro with the Kingdom of the Serbs, Croats and Slovenes, and that this decision had been accepted by His Royal Highness the Crown Prince of Serbia.

The Department further notes the statement that the Legation of Serbia in the United States will, hereafter, be known as the Legation of the Kingdom of the Serbs, Croatians and Slovenes. [107]

In reply I have the honor to inform you that the Government of the United States welcomes the union of the Serbian, Croatian and Slovene provinces within the boundaries of the former Austro-Hungarian Monarchy to Serbia and recognizes the Serbian Legation as the Legation of the Kingdom of the Serbs, Croatians and Slovenes.

In taking this action, however, the United States Government recognizes that the final settlement of territorial frontiers must be left to the Peace Conference for determination according to the desires of the peoples concerned.

Accept [etc.].

Frank L. Polk

(Underscoring supplied.) [108]

"Valentine vs. Neidecker (1936), 299 U.S. 5, at page 13:

"We must assume that the representatives of the United States had these clauses before them when

they negotiated the treaty with France and that the Omission was deliberate."

[12] Indicative of the unrest prevailing at the turn of the century was the assassination of the King and Queen of Serbia in June 1903.

[13] Messages and Papers of the Presidents, Volume XVII, page 8703, where he referred to the fact that the Austro Mungarian Empire "has gone to pieces and no longer exists. Not only that, but the several parts of that empire, it is agreed now by Italy and all her associates, are to be erected into independent States * * *" and the fact that Fiume must serve as an outlet for "the States of the new Jugo-Slav group," and again, (p. 8704) "It is part also of the new plan of European order which centres in the League of Nations that the new States erected there shall accept a limitation of armaments," etc. (Underscoring supplied.)

[14] "Messages and Papers of the Presidents," Vol. XVII, page 8731. [109]

[15] It is not without significance that Article 434 of the Treaty of Versailles to which the Serb-Croat-Slovene State was a party, provides:

"Germany undertakes to recognize the full force of the Treaties of Peace and Additional Conventions which may be concluded by the Allied and Associated Powers with the Powers who fought on the side of Germany and to recognize whatever dispositions may be made concerning the territories of the former Austro-Hungarian Monarchy, of the Kingdom of Bulgaria and of the Ottoman Empire, and to recognize the new States within their frontiers as there laid down." (Department of State Publication 2724 Conference Series 92.) (Underscoring supplied.)

[16] Some point is made that in June 1921 while Charles Evans Hughes was Secretary of State he

addressed a communication to a private law firm in New York to the effect that it was the opinion of the Department that the previous treaties between Serbia applied to the territory acquired by the Serb-Croat-Slovene State from the Austrian-Hungarian Empire. While that opinion is entitled to most respectful consideration I do not think a private communication in a non-adversary proceeding is entitled to prevail over the reasons assigned for my conclusions in the within memorandum.

[17] See Footnote No. 6, ante. [110]

[Endorsed]: Filed July 14, 1952.

In the United States District Court, for the Southern District of California, Central Division

No. 13467-PH

ANDRIJA ARTUKOVIC,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

ORDER GRANTING PETITION FOR WRIT OF HABEAS CORPUS, RELEASE OF PETITIONER AND RELEASE ON BAIL PENDING APPEAL

This cause came on regularly for hearing pursuant to a Petition for Writ of Habeas Corpus and return of the Writ. The Petitioner appeared by his attorneys, Edward J. O'Connor, Vincent

G. Arnerich and Robert T. Reynolds. The Respondent appeared by its attorneys, Walter S. Binns, United States Attorney, Clyde C. Downing, Assistant United States Attorney, and Arline Martin, Assistant United States Attorney. The Federal Peoples' Republic of Yugoslavia appeared by its attorney, Ronald Walker. Hearing was had; documentary evidence and oral testimony was offered by the respective parties, and the Court, being fully advised in the premises, makes the following Order:

It Is Hereby Ordered, Adjudged and Decreed that the Petition for Writ of Habeas Corpus be granted and that Andrija Artukovic be released and discharged from custody and the bond heretofore posted, in the sum of $50,000.00, is exonerated, upon filing and entry of this formal judgment and posting of bond in the sum of $5,000.00. [111]

It Is Further Ordered, Adjudged and Decreed that, pending review of this decision, Andrija Artukovic be released on bail in the sum of $5,000.00.

It Is Further Ordered, Adjudged and Decreed that Andrija Artukovic respond to all further orders of the court and of the appellate court, and in the event of his default, bail will be forfeited and he remanded to the custody of the United States Marshal.

Dated this thirtieth day of July, 1952.

/s/ PEIRSON M. HALL,
Judge, United States District Court.

Approved As to Form:
JAMES J. BOYLE,
United States Marshal.
By: WALTER S. BINNS,
United States Attorney.
CLYDE C. DOWNING,
Assistant United States Attorney.
ARLINE MARTIN,
Assistant United States Attorney.
THE FEDERAL PEOPLES' REPUBLIC OF YUGOSLAVIA.
/s/ By RONALD WALKER,
Attorney.

Affidavit of Service by Mail attached.

[Endorsed]: Filed July 31, 1952. [112]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that Rafo Ivancevic, Consul General of the Federal Peoples' Republic of Yugoslavia does hereby appeal to the United States Court of Appeals for the Ninth Circuit from the Order Granting Petition for Writ of Habeas Corpus, Release of Petitioner and Release on Bail pending Appeal entered in this action on July 31, 1952.

/s/ RONALD WALKER,
Attorney for Rafo Ivancevic, Consul General of the Federal Peoples' Republic of Yugoslavia.

[Endorsed]: Filed August 13, 1952. [114]

[Title of District Court and Cause.]

STATEMENT OF POINTS ON APPEAL

(On behalf of Demanding Government.)

Rafo Ivancevic, as Consul General of the Federal Peoples' Republic of Yugoslavia, presents herewith the following Statement of Points upon which he, as appellant, will rely on appeal:

1. The District Court erred in granting the Writ of Habeas Corpus discharging the Petitioner.

2. The District Court erred in finding as a fact that the Treaty of Extradition between the United States of America and the Kingdom of Serbia of 1902 is not now in force and effect between the United States of America and the Federal Peoples' Republic of Yugoslavia.

3. The District Court erred in its conclusion as a matter of law that the Treaty of Extradition between the United States of America and the Kingdom of Serbia of 1902 is not now in force and effect between the United States of America and the Federal Peoples' Republic of Yugoslavia.

/s/ RONALD WALKER,
Attorney for Rafo Ivancevic, as Consul General of the Federal Peoples' Republic of Yugoslavia.

Affidavit of Service by Mail attached.

[Endorsed]: Filed September 4, 1952. [115]

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF RECORD ON APPEAL

(On behalf of Demanding Government.)

Pursuant to Rule 75(a) of the Federal Rules of Civil Procedure, Rafo Ivancevic, as Consul General of the Federal Peoples' Republic of Yugoslavia, the Demanding Government, appellant herein, hereby designates for inclusion in the record on appeal to the United States Court of Appeals for the Ninth Circuit, taken by Notice of Appeal filed August 13, 1952, the following portions of the record, proceedings and evidence in this action:

1. Petition for Writ of Habeas Corpus.

2. Order to Show Cause Why Writ of Habeas Corpus Should Not Issue.

3. Return to Order to Show Cause.

4. Appearance of Rafo Ivancevic, as Consul General of the Federal Peoples' Republic of Yugoslavia.

5. Amended Petition for Writ of Habeas Corpus.

6. Minute Orders of September 17, 19, October 8, 22, November 5, all in 1951, January 14, February 18, April 7, May 12 and June 9, all in 1952. [117]

7. Memorandum Opinion filed July 14, 1952.

8. Order Granting Petition for Writ of Habeas

Corpus, Release of Petitioner and Release on Bail pending appeal filed July 31, 1952.

9. Statement of Points on Appeal filed on behalf of Rafo Ivancevic, etc.

10. Designation of Contents of Record on Appeal (by Demanding Government).

11. Petitioner's Exhibits 1 to 15-A inclusive.

12. Demanding Government's Exhibits A to H inclusive.

13. Reporter's Transcript of Proceedings for September 17 and 19, 1951, October 8, 1951, October 22, 1951, and November 5, 1954.

/s/ RONALD WALKER,
Attorney for Rafo Ivancevic, as Consul General of the Federal Peoples' Republic of Yugoslavia.

Affidavit of Service by Mail attached.

[Endorsed]: Filed September 4, 1952. [118]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 119, inclusive, contain the original Petition for Writ of Habeas Corpus; Order to Show Cause Why Writ of Habeas Corpus Should Not Issue; Return to Order to Show Cause; Ap-

pearance of Rafo Ivancevic, Consul General of Federal Peoples' Republic of Yugoslavia; Amended Petition for Writ of Habeas Corpus; Memorandum; Order Granting Petition for Writ of Habeas Corpus, Release of Petitioner and Release on Bail Pending Appeal; Notice of Appeal; Statement of Points and Designation of Record on Appeal and a full, true and correct copy of Minutes of the Court for September 17 and 19, October 8 and 22, and November 5, 1951, and January 14, February 18, April 7, May 12 and June 9, 1952, which together with original Petitioner's Exhibits 1 to 15-A, inclusive, and Demanding Government's Exhibits A to H, inclusive, and copy of reporter's transcript of proceedings on September 17 and 19, October 8 and 22 and November 5, 1951, transmitted herewith, constitute the record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing and certifying the foregoing record amount to $6.00 which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this eighteenth day of September, A.D. 1952.

[Seal] EDMUND L. SMITH,
Clerk.

/s/ By THEODORE HOCKE,
Chief Deputy.

[Title of District Court and Cause.]

SUPPLEMENTAL TRANSCRIPT

NOTICE OF APPEAL BY RESPONDENT

Notice is hereby given that the respondent, James J. Boyle, United States Marshal, hereby appeals from the Order Granting Petition for Writ of Habeas Corpus, Release of Petitioner, and Release on Bail Pending Appeal, which Order was entered in this action on July 31, 1952.

WALTER S. BINNS,
United States Attorney.
CLYDE C. DOWNING,
Assistant U. S. Attorney,
Chief, Civil Division.
/s/ ARLINE MARTIN,
Assistant U. S. Attorney,
Attorneys for Respondent.

[Endorsed]: Filed September 29, 1952.

[Title of District Court and Cause.]

SUPPLEMENTAL DESIGNATION OF RECORD ON APPEAL

Rafo Ivancevic, as Consul General of the Federal Peoples' Republic of Yugoslavia, appellant herein, hereby supplements his previous designation of the record on appeal herein, and in addition to the matters therein set forth, designates for inclusion in the record of appeal to the United States Court of Appeals for the Ninth Circuit, taken by notice

of appeal filed August 13, 1952, the following portions of the record in this action:

Notice of Appeal filed by Respondent James J. Boyle, filed September 29, 1952.

This Supplemental Designation of Record on Appeal,

/s/ RONALD WALKER,
Attorney for Rafo Ivancevic, etc.

Affidavit of Service by Mail attached.

[Endorsed]: Filed October 2, 1952.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO SUPPLEMENTAL TRANSCRIPT

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing are the original Notice of Appeal by Respondent and Supplemental Designation of Record on Appeal which constitute the Supplemental Transcript of Record on Appeal to the United States Court of Appeals for the Ninth Circuit.

Witness my hand and the seal of said District Court this sixth day of October, A.D. 1952.

[Seal] EDMUND L. SMITH,
Clerk.
/s/ By THEODORE HOCKE,
Chief Deputy.

In the United States District Court, Southern District of California, Central Division.

No. 13467-PH Civil

ANDRIJA ARTUKOVIC, Petitioner,

vs.

JAMES J. BOYLE, United States Marshal, Respondent.

REPORTER'S TRANSCRIPT ON HEARING FOR WRIT OF HABEAS CORPUS

Los Angeles, California, September 17, 1951

Honorable Peirson M. Hall, Judge Presiding.

Appearances: For the Petitioner: O'Connor & O'Connor, 530 West Sixth Street, Los Angeles 14, California; by Edward J. O'Connor, Esq.; and Robert T. Reynolds, Esq., Washington, D. C. [1*] For the Respondent: Ernest A. Tolin, United States Attorney, Los Angeles 12, California; by George E. Danielson, Assistant United States Attorney. For Rafo Ivancevic, Consul General of Federal Peoples' Republic of Yugoslavia: Ronald Walker, Esq., 1023 Rowan Building, Los Angeles 13, California. [2]

(Other court matters.)

The Clerk: No. 13467, Andrija Artukovic v. James J. Boyle, United States Marshal.

Mr. O'Connor: Ready for the petitioner.

Mr. Danielson: Ready for the respondent, your Honor, the United States Marshal.

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* Page numbering appearing at bottom of page of original Reporter's Transcript of Record.

The Court: Mark it ready.

How long will that matter take?

Mr. O'Connor: The petitioner will take one-half hour.

Mr. Danielson: The respondent, your Honor, will not take very long, about five minutes.

Mr. Walker: I hope to be heard in the matter, your Honor. I should think I would need about 15 or 20 minutes.

The Court: Is it anticipated that evidence will be adduced?

Mr. O'Connor: No, it isn't, your Honor. The only thing that will take the time on the part of the petitioner will be in this kind of a proceeding it is necessary to go into some of the surrounding facts. It will just be in the form of a statement. A half-hour may be too long. It won't take over that.

The Court: You mean an uncontested statement or evidentiary facts? [5]

Mr. O'Connor: Well, just the statement of the applicable law, a statement of the facts, which is on file here before the Commissioner and before this court. It will just be a statement of the law and the facts of the law.

The Court: Very well.

The Clerk: Are you appearing in amicus curiae?

Mr. Walker: No.

The Court: What was that?

Mr. Walker: Mr. Stacey is inquiring what my status is. I don't know yet, your Honor.

The Court: Very well.

(Other court matters.)

The Court: Very well. The Artukovic matter.

Mr. Walker: Your Honor, before we begin argument on that matter, I have handed to Mr. Stacey, the clerk, a proposed appearance of the Consul General of the Federal Peoples' Republic of Yugoslavia and ask leave that it be filed so that I may participate in these proceedings and that he be joined as a party to the proceedings, under the theory that the Yugoslavian government is the real party in interest in this matter, they having caused the arrest and detention of the accused.

The Court: Is there any objection?

Mr. O'Connor: Yes, your Honor. We object to the Yugoslavian government participating in this hearing before the [6] court on this habeas corpus proceeding. This proceeding here is entirely between the United States Marshal and the petitioner. It resolves itself down only to a question of the law as to whether or not the court has the right under these circumstances to release the petitioner on bail. The law has been supplied by the United States Marshal's attorney, the Assistant United States Attorney, and a memorandum of the law has been submitted by the petitioner, and that is all there is to the proceedings.

Now there is no reason or there are no grounds upon which the Yugoslavian government should participate at this time. They will have their hearing at a later date.

The Court: At what period?

Mr. O'Connor: When the extradition hearing is set, the date of which is not known.

The Court: And at that time they may appear?

Mr. O'Connor: Yes.

The Court: Do you concede that?

Mr. O'Connor: That is the time when they have their opportunity to appear and that is the time scheduled for them, and that is the way they initiated the proceedings so they are bound by it.

Mr. Walker: I have some authorities on the matter if your Honor cares to consider them.

The Court: Yes, I would like to hear them. [7]

Mr. Walker: First is Rule 17(a) of the Federal Rules of Civil Procedure, which provides simply that all actions shall be prosecuted by the real party in interest.

A habeas corpus proceeding is in the nature of a civil proceeding. I note in all the cases, or at least most of the cases cited by all of us where the cases have reached the appellate court or even the district court, that in each case the demanding government has been represented by private counsel.

The case of Ornelas v. Ruiz, in 161 U.S., at page 502, is a case directly in point. There the facts were almost on all fours with this, in that a complaint in extradition was sworn out by a consul or a consul general for Mexico represented by private counsel.

The matter finally reached the Supreme Court and the question of the right of appeal by the consul from a writ was in question. The court states:

"The Republic of Mexico applied for the extra-

dition of these petitioners by complaints made under oath by its consul at San Antonio, Bexar County, Texas, under Section 5270 of the Revised Statutes. The official character of this officer must be taken as sufficient evidence of his authority, and as the government he represented was the real party interested in resisting [8] the discharge, the appeal was properly prosecuted by him on its behalf. (Citing the Wildenhus's case, 120 U.S. 1.)"

Now if a right of appeal exists, certainly a right to appear and participate exists.

The Court: This was a writ of habeas corpus, was it not?

Mr. Walker: Oh, yes.

The Court: In other words, the Commissioner had ordered him extradited and he filed a petition for a writ of habeas corpus in the district court which granted the writ.

Mr. Walker: The district court went further, that is, there are other factors involved. The district court granted the writ, also a writ of certiorari and had the Commissioner certify to it.

The district court found the exact opposite of what the Commissioner had found. In other words, the question there, as it will be here, was a matter of political offenses. The Commissioner found that the offenses were not political in nature. The district court reviewed the evidence and made an independent finding on certiorari that the offenses were political in nature.

The Supreme Court held that the writ did not include certiorari and that the only testimony was

whether there was evidence before the Commissioner sufficient to uphold his [9] findings.

The Court: It does not appear whether or not the consular office was present at the hearing before the district court, but your point is that if he had a right to appeal he had a right to be present and appear at the petition.

Mr. Walker: It must necessarily follow that he has a right to participate in the proceedings.

The Court: What is the position of the United States Government?

Mr. Danielson: Your Honor please, we do not object to the appearance of the demanding authority in this matter. We contend that this is a civil matter and that the real party in interest would have a right to appear.

There is no express statement that we found in the law which permits him to appear here, but the opinions of the decisions almost without exception indicate an appearance by all three parties.

The Court: The United States?

Mr. Danielson: That is correct. The petitioner, the Government and the demanding authority.

The Court: I will let you file the petition.

Mr. Walker: Thank you.

The Court: Have you served one upon counsel?

Mr. Walker: I have served counsel.

The Court: Very well. It will be ordered filed.

Mr. O'Connor?

Mr. O'Connor: Your Honor please, in view of the nature of this case and the necessity of some of the surrounding circumstances, the seriousness

of the offenses that are charged, I am going to ask the court to bear with me for some examination into the surrounding circumstances which the court would not ordinarily do on a writ of habeas corpus proceedings.

Mr. Walker: Mr. O'Connor, will you permit an interruption for just a moment?

Your Honor, there is some question, and it has been raised before, as to the ability of the accused to understand and speak English. An interpreter was waived for the purpose of the argument before the Commissioner. I would like to have, if possible, the same stipulation and understanding in the record here.

The Court: The accused is present in person.

The Petitioner: I understand, your Honor.

The Court: You understand English?

The Petitioner: Yes, your Honor.

The Court: Are you capable of understanding the discussions of counsel?

The Petitioner: Yes, your Honor.

The Court: Do you wish an interpreter?

The Petitioner: For the present moment, no. [11]

The Court: Do you waive the right to have an interpreter?

The Petitioner: For the present moment, no.

The Court: On this proceeding?

The Petitioner: On this proceeding.

The Court: That is, you do not waive the right or you do waive the right?

The Petitioner: I do waive the right.

The Court: Very well.

Mr. O'Connor: Your Honor please, this is a petition before this court on a writ of habeas corpus asking this court to release the petitioner on bail until the hearing date. The hearing date at this time is not fixed.

The Court: I thought it was fixed as October 22nd.

Mr. O'Connor: No, your Honor. On October 22nd it will be fixed at that time. In other words, the Yugoslavian government has until October 22nd to present some kind of evidence to show that the petitioner here is guilty of the offenses charged.

At this time there is absolutely no evidence of any kind that this petitioner here is guilty of the offenses that are charged, or any facts or any evidence at all to support the Yugoslavian government's contention that he is guilty.

So the Commissioner has set October 22nd as the last [12] date on which the Yugoslavian government will have to get that evidence over here, and when that is here then a date will be fixed for the extradition hearing.

So, your Honor please, our petition here this morning is to ask the court that the petitioner, who has been in custody since August 29, be released on bail until the extradition hearing date is set.

Now, your Honor please, the law on this proceeding is clear. This involves an extradition proceeding instituted by a foreign government, by the Communist government of Yugoslavia through their consul in San Francisco pursuant to a treaty which, incidentally, is not material here, but it should be

pointed out is not a treaty with the Yugoslavian government but is a treaty with the Kingdom of Servia.

The Court: You say it is not material. It looks to me like that would be very material. If there is no treaty, if there is no extradition treaty, no right of extradition exists.

Mr. O'Connor: Your Honor please, it is a vital defense which will be heard possibly by this court as to the validity of that treaty at a later time and at a later proceeding. I do not feel that it is proper material to present to the court at this time, only on the writ of whether the court desires to release this petitioner on bail.

The Court: If there is no treaty they have no right to [13] hold him, and that would be one ground for granting your writ of habeas corpus, if your ground is good.

Mr. O'Connor: That, your Honor, will have to be gone into in more detail and at considerably more length at a later time when the court will be called upon to pass upon the question of whether or not that treaty is a treaty or not with the United States.

The Court: I think I am called upon to pass upon it now.

Mr. O'Connor: Well, your Honor please, the treaty, which is set forth in the complaint, as the court sees there, is a treaty executed between the United States and the Kingdom of Servia, in 1902. At that time the government of Yugoslavia was never heard of. The government of Yugoslavia

never came into existence until 1929. So the petitioner contends that that treaty is not a treaty under which this extradition proceeding can be maintained.

The Court: Well, is there any acknowledgment of that treaty by the government which succeeded—it was a Croatian kingdom, was it not?

Mr. O'Connor: There was a Kingdom of Croatia which existed for some time after that, which was later overrun by the Yugoslavians and the Yugoslavian government set up in 1929.

But I believe, your Honor, that I speak for both the Yugoslavian government and the petitioner, that there will [14] not be sufficient legality or sufficient documentary introducible or admissible evidence to present to the court at this time to enable the court to make a clear decision on that point. I think the court might keep it in mind in considering whether he should be released on bail, and the court at a later time is going to have the exact question before him, supplemented with all of the support available by the Yugoslavs and also available by the petitioner.

The State Department of the United States is not in this at all. As a matter of fact, they told the Yugoslavian government not to interfere with this at that time, so the State Department has never been contacted on this extradition proceeding here.

Now, your Honor please, with that in mind let me just proceed.

This whole procedure arises by statute, by Section 3184 of the United States Code Annotated,

Title 18. So this whole extradition proceeding with the foreign government is enacted by statute.

Now the regular procedure is that the fugitive is apprehended, the date is set for the foreign government to present their evidence, or it may be presented at the time of the arrest—in this instance they didn't do it—then a time is set for an extradition hearing.

The Court: If they do not produce it in 60 days—— [15]

Mr. O'Connor: He is to be released.

The Court: Is there not a holding of the cases that the Government of the United States is obliged to hold such a person for a period of 60 days under the terms of the treaty?

Mr. O'Connor: Under the terms of the treaty the United States is to hold this petitioner for a period of 60 days, two months, as used in the treaty that they rely on. Then if the evidence is not presented within that two months period then he is to be discharged.

The Court: If that treaty is in full force and effect, then does not the provision of that treaty override any general provisions of law relating to bail?

Mr. O'Connor: No, it doesn't, your Honor, and that is what I would like to direct the argument to at this time.

Now, your Honor please, that is a pretty clear statement of the ground upon which the Yugoslavian government will apparently rest. However, that has been overruled by the Supreme Court of

the United States in the Henkel case, which is cited in my petition and also relied upon by the respondent.

The Supreme Court in that case held that even though this was a statutory procedure, the right of release on bail pending an extradition hearing was granted to both the Commissioner of the court and the United States District Court and to the Circuit Court. [16]

The Court: Was the same provision in the treaty?

Mr O'Connor: Yes.

The Court: Involved in that case as in this case about the 60 days?

Mr. O'Connor: Yes, your Honor. That is the uniform provision in all of these treaties, the same method for holding the petitioner is set forth in all of the treaties, and it is referred to in the various opinions of the court.

In the Henkel case the United States Supreme Court did say that there was no question but what the United States District Court had the right under the Constitution of the United States to release a fugitive on bail pending an extradition hearing.

The Court: I do not think they quite said it that way. They said, we are unwilling to hold that the courts do not have that power.

Mr. O'Connor: That is right.

Now I direct the court's attention to the language in the Gannon case, which was decided shortly thereafter and which interpreted that same language, and in which the United States District Court in the Gannon case did release the petitioner on bail

pending the extradition hearing, and the United States District Court of the District of Pennsylvania in the Gannon case quoted directly the language of this court here as just quoted from the Supreme Court's decision, and in [17] that case the United States District Court said that from that language it is satisfied that the law in the United States is clear as to the district court's right to release a petitioner on bail pending his extradition hearing.

And in the Gannon case, your Honor, the United States District Court went on further and elaborated upon the ends of justice being best served by releasing a man on bail pending his extradition hearing.

The Court in that case, as the language will point out, decided that although the offense was not against the United States that the discretion within the court was clear, that it had the right to release the petitioner on bail if it so felt that the ends of justice would be best served. And the Gannon case went on to say, and I think it is a very important point in our present situation, much more important in this case than it was even in the Gannon case, the court went on to say that this extradition proceeding is not to be used as a means of punishment, that this extradition proceeding is not to be used as a means of holding a man in jail unduly, waiting for his extradition hearing time to come up.

The court further went on to say that while the man is in jail it is difficult for him to have an opportunity to prepare and assemble the facts which

he will need to present his defenses when the extradition hearing comes up. And considering those items, your Honor please, I think that that [18] is one of the greatest obstacles that occurs in our case right here, in preparing our defense.

In our present situation we have a party who speaks fairly good English but it is not too good, that he is in jail, he is in the custody of the jailor, that it is a foregone conclusion that if he ever is returned to those Communist courts in Yugoslavia he is going to be shot, and there is nobody—I don't think even Mr. Walker will deny that, because they have been doing that, they have been gathering up these opposition to Communism one by one, starting with Milhailovich, and every time they get them it is boom, and that is the end.

So, if your Honor please, all we ask is that this man here have a reasonable time and all the facilities to confer with his lawyers, to confer with other persons who are in a position to help him get facts, so that all we ask is that at the time that that extradition hearing is set—it may be six months, eight months, it may be 12 months from October 22nd—all we are asking for is that this man have enough time and have full opportunity to talk with his lawyers, to confer with his lawyers and to get all that material present so that he can present it at the time of the extradition hearing and let it then be determined whether or not the accusations made against him are true or whether those accusations made against him are false. [19]

The Court: What sum do you consider a reasonable bail here?

Mr. O'Connor: Well, I think, your Honor please, that this is a very serious case. I think it is similar to a man who is charged with a capital offense.

The Court: He is charged with a capital offense as to 23 persons, as I counted them.

Mr. O'Connor: That is right. So it is a very serious offense. The amount of the bail I think should be substantial. However, that is entirely discretionary with the court.

The Court: What in your opinion would be a substantial bail?

Mr. O'Connor: I think, your Honor please—I hate to say it but I think—that $50,000 is a substantial bail in this type of a case. I don't know whether he can raise it or not, but I think that is a substantial bail.

Now, your Honor, to go on a little further just to show the court here facts under which the presence of this petitioner here in the court on the day set is guaranteed, it is a foregone conclusion that this defendant's only place where he can get any kind of a hearing of his facts or of these allegations determined is in the United States courts. He would not leave the jurisdiction of this court under his own volition for any circumstance because his whole future, his whole life, the whole life of his little children, the whole [20] life of his wife, their future existence depends on a fair hearing being given to him by the United States courts. If he has had a chance to present his evidence, if he has had a

chance to present himself to the court and the hearing here is decided against him, then there is nothing more that we can do, but at least he has had full opportunity and the ends of justice would have been well served in giving that opportunity to him.

Now the Gannon case specifically pointed that out, where the United States District Court, the District of Pennsylvania, said that that was one of the reasons why he had the right to release a defendant on bail in this extradition proceeding.

Now in the Gannon case the capital offense was not involved, it was an offense of forgery. However, the court exercised its discretion and pointed these things out.

Now, your Honor please, we are talking about a capital offense but now we have to talk a little bit about the circumstances again because here is where the court is called upon to exercise its discretion.

Now, your Honor please, it has been stated in Congress many times, it has been stated by lawful authorities many times throughout the United States, that there is at this time an international conspiracy by the Communist government to overcome the other type of governments by force and violence, [21] that they will go to any means to do so.

Now, your Honor please, here is an outspoken and bitter opponent of the Communist government of Yugoslavia, so much so that he was forced to flee under an assumed name to get out of Yugoslavia so that he would not be arrested and shot at that time.

The Court: When did he flee?

Mr. O'Connor: He left there in 1943, I think it was—no, 1945.

The Court: 1945?

Mr. O'Connor: 1945; yes, your Honor.

The Court: These crimes that are alleged to have been committed were in the year '41.

Mr. O'Connor: '41 and '42.

The Court: '41 and '42?

Mr. O'Connor: Yes, your Honor.

The Court: Was that nation in a state of war at that time?

Mr. O'Connor: Yes.

The Court: With whom, with Germany or with everybody?

Mr. O'Connor: You will remember, your Honor, at first the Yugoslavian government signed a pact with Germany——

The Court: When?

Mr. O'Connor: They signed that pact on March 25, 1941, so that they were a member of the German and Italian pact on [22] March 25, 1941.

Then that pact, as the court may recall, was signed by Prince Paul. Then a great deal of dissention arose, Croatia was one of the countries of Yugoslavia, a great deal of dissention arose in the other divisions, so much so that there was a revolt started right then and they started their fighting inside of Yugoslavia as early as the latter part of 1940 when they actually got their fighting started. That is when the court recalls Italy went down to Greece, Greece put up too tough a battle and Ger-

many had to march through them and help them out.

The Court: This was in the year 1941?

Mr. O'Connor: This was in the year 1941. It was March 25, 1941.

So since that date there has been a continual struggle and fighting in Yugoslavia. One division was aligned with Russia——

The Court: Was Yugoslavia at war with all of Germany's enemies as of March 1941?

Mr. O'Connor: Yes, your Honor, as of March 25, 1941.

The Court: Is it your position that she was then at war with Soviet Russia?

Mr. O'Connor: No.

The Court: Well, Germany was at war with Soviet Russia.

Mr. O'Connor: Not at that time, I don't think.

The Court: In 1941?

Mr. Reynolds: Not on March 25, 1941, your Honor, if you will permit.

Mr. O'Connor: You will remember first the Germans had a friendly pact with Russia, then they didn't remain friendly too long, then sometime later the Germans invaded Russia and started the war with Russia. The exact dates of that war I think the court is more familiar with than I am.

Anyway, the point that I desire to present to this court is that the divisions inside of Yugoslavia started to take their lines when the war first began, and directing the court's attention to that March 25, 1941 treaty in which they aligned themselves with Germany, that treaty was later, they had so much

turmoil that they later overran the government, and they had a revolt and they threw that government out and——

The Court: Was that treaty ever officially abrogated?

Mr. O'Connor: Yes.

The Court: By any government?

Mr. O'Connor: Yes, it was, your Honor.

The Court: When did the present government take over?

Mr. O'Connor: Marshal Tito took over the present government by virtue of the treaty of Yalta in February 1945, and before that, sometime in 1944, the situation had narrowed itself down to a conflict with Milhailovich, who opposed Tito, and Tito at that time had the support of Stalin, [24] and so his position was stronger than Milhailovich, so in the course of compromising the differences there it was finally resolved in February 1945 that Tito be placed in charge of the Yugoslavian government.

About that time the petitioner here was forced to flee along with a great many of the other leaders in the Yugoslavian nation, so much so that when Tito —the court will recall when he was first sworn in he said, "I am going to issue a general pardon to all opposition and let's have a united country now and forget what has happened in the past and everything will be all right"—and they all started to do that, and it was going along pretty well until Milhailovich returned and Tito got his hands on Milhailovich and put him through a so-called trial over there, and the court will remember that this Yugo-

slav representative I have here asked for permission to be in the courtroom but you will recall that when Milhailovich was being tried by Tito in Yugoslavia that the six American fliers were subpoenaed and appeared at the court over there to testify in favor of Milhailovich, and the Communist government over there wouldn't even allow them in the court building and denied their testimony, and Milhailovich was railroaded through and shot.

Now, your Honor, these are some of the facts I think that are necessary for the court to consider as to whether or not this man should be released so that he should have a [25] full opportunity to present all of his facts.

The Court: How old is he?

Mr. O'Connor: He is 52 years old.

The Court: How old is his wife?

Mr. O'Connor: 31. And the four children are 9, 7, 3 and 9 months.

The Court: Do they own a home here?

Mr. O'Connor: Yes, they do.

Mrs. Artukovic: No,

The Court: Are they buying a home?

Mrs. Artukovic: No.

The Court: Renting a home?

(Conference between counsel and Mrs. Artukovic.)

Mr. O'Connor: His brother owns the home. They have been living in that home.

The Court: His brother or her brother?

Mr. O'Connor: His brother, the petitioner's brother.

The Court: Is his wife a native of the United States?

Mr. O'Connor: No, his wife is a native of Croatia, Austria. The little child is a citizen of the United States.

The Court: All three of them?

Mr. O'Connor: No, just the littlest girl.

The Court: The little girl is the youngest one?

Mr. O'Connor: The youngest one; yes.

The Court: You say his wife is a native of——

Mr. O'Connor: Of Austria.

The Court: Has she been naturalized?

Mr. O'Connor: No. Her petition is now pending in the United States Immigration and Naturalization Service for the purpose of hoping that they will in time be able to become a United States citizen

The Court: How long has she lived in the United States?

Mr. O'Connor: Since July 1948.

Your Honor please, they have lived here in this same house down there that the brother owns, they have lived there continuously since July 1948, within the jurisdiction of this court and during this time they have applied to the Immigration and Naturalization Service with the view of becoming a citizen.

The Court: Both of them?

Mr. O'Connor: Both of them; also the children.

The Court: Is it claimed by the Naturalization

Service that the entry of the petitioner here was legal or illegal.

Mr. O'Connor: That is the question that is being decided by the Immigration Service right now.

The Court: Is there a proceeding pending on it?

Mr. O'Connor: There is a proceeding pending now.

The Court: In connection with his application for naturalization or in connection with a warrant for his deportation? [27]

Mr. O'Connor: Both, if your Honor please.

Mr. Reynolds: No, no.

The Court: Wait a moment. Your assistant is shaking his head.

Mr. O'Connor: The proceeding now in the immigration office is the entry into the United States, which is the question they are now considering.

The Court: What I am asking is this: Are they considering that in connection with his petition for naturalization? Has he filed a petition for naturalization?

Mr. O'Connor: Not yet.

The Court: His wife has?

Mr. Reynolds: May it please the court, I have handled the entire immigration proceedings to date and I hope I may present it to this court.

This man and his wife are neither able to present petitions for naturalization yet because they entered the United States as visitors on July 10, 1948 and made application for adjustment of status under the Displaced Persons Act of 1948 as amended.

The Court: Have they received that?

Mr. Reynolds: No, sir, they have not. The male petitioner's petition was denied on the technical ground that he made an unlawful entry, that he entered under a name other, than his own, and the United States was precluded from examining [28] his background and determining whether he could be permitted anyway.

Now the wife has presently an application, rather a proceeding before the United States Immigration and Naturalization Service in deportation and she will make petition for suspension of deportation on the basis of his economic hardship to the American citizen child of these people.

The Court: There is no petition for naturalization pending?

Mr. Reynolds: No, sir, there is no petition. There is no ground by which they might petition. They have no status on which they might petition at present.

The Court: And the United States has a deportation proceeding pending against the wife?

Mr. Reynolds: Against the wife, against the husband and against all three children, or rather three of the four children, two of whom were born in Croatia and one born in Ireland.

I might mention in passing, your Honor, that the local office of the Immigration and Naturalization Service has denied the petition of the children 7 and 9 years old from displaced status on the ground that they too entered unlawfully under an assumed name, although I believe the court will recognize children entering at the age of 3 and 5 years could

not possibly have any background which would preclude them [29] from entry into this country.

The Court: What is his occupation?

Mr. O'Connor: The petitioner here by training is a lawyer, he was a lawyer in Croatia before this all began.

The Court: What is his occupation here?

Mr. O'Connor: Bookkeeper.

The Court: You say he left Croatia in 1945?

Mr. O'Connor: Yes, your Honor.

The Court: Well, do you consider it an invasion of any of his rights where he was between 1945 and '46?

Mr. O'Connor: No, your Honor. He left Yugoslavia and went to Ireland.

(Conference between counsel.)

Mr. Reynolds: If your Honor will permit me, I am entirely familiar with that part of the case because it all had to be brought out in the immigration proceedings.

The petitioner left Croatia and went to the English occupation zone of Austria. I have here the petitioner's diplomatic passport issued by Croatia in which there is stamped a "No security objection" by an English military force in Austria. He was then released by the English and went——

The Court: That was '45?

Mr. Reynolds: May of '45 after the fall of the government of Croatia. [30]

He then went to the English zone, into the American zone and lived in the American zone of Austria for 15 months, fully identified as Andrija Artu-

kovic, and I have here the original document identifying him as that person in both German and English. He was called upon to present that document on numerous occasions to American occupation authorities and was never challenged. It might be noted in passing here that his name was not included among those war criminals who were charged and tried in Nuremberg.

In 1946, fearing assassination by Communists such as occurred to others of his colleagues, he fled into Switzerland, entering Switzerland under an assumed name and resided in Switzerland from November 1946 to July of 1947. The Swiss government provided him with a certificate of identity in the name of Alois Anich with knowledge, your Honor—and we can prove that also—that he was Andrija Artukovic, recognizing that he had a right to protect himself from assassination by the use of an assumed name.

With the certificate of identity he then moved to Ireland with his family.

By the way, I forgot to mention that his family had to remain in Austria and followed him into Switzerland. The entire family went to Ireland as visitors, still under the name of Anich, and were given a certificate of identity by the Irish government in the same name. I have evidence of that.[31]

They applied for a visitor's permit to enter the United States to visit the brother and sister-in-law of the alien petitioner, and entered the United States on July 16, 1948, and also under the name of Alois Anich.

The Government held that that entry was unlawful. The Government doesn't charge it was fraudulent, the Government held it was unlawful because the Government was precluded from examining his background and determining whether he might have been admitted if he was known as Andrija Artukovic, and on that narrow ground they denied his displaced person application. There has been no finding made and no evidence offered in any proceedings, either before the Immigration Service or the courts of the United States, that this man is guilty of any crime. There have been numerous newspaper allegations but no evidence has been brought forth in support of that, your Honor.

Mr. Walker: Your Honor, for the record, I wonder if we could have his name.

Mr. O'Connor: You will have your chance to talk later.

Mr. Walker: I would like to know his name, that is all.

The Court: Is he associated with you?

Mr. O'Connor: Yes. I would like to associate Robert T. Reynolds, a member of the Circuit Court of Appeals and District of Columbia's highest court in the District of Columbia, as an associate in this matter. [32]

The Court: He may be admitted specially for the purposes of this case.

Mr. Reynolds: Yes.

The Court: Very well.

Mr. Walker: May the record show that it was Mr. Reynolds who just addressed the court?

The Court: Yes.

By the way, it will be necessary to keep that courtroom clear back there so that there can be ingress and egress from the courtroom. Otherwise I will have to clear the courtroom of everybody who is standing up. Will the marshal please keep the people out of the aisles and the back door.

Proceed.

Mr. O'Connor: Your Honor please, while we are on this point, there has been sufficient showing in the course of this discussion, which will not be denied, that there was a time——

The Court: I think that at the appropriate time the petitioner can take the witness stand and testify concerning the things which counsel has stated, unless the Government or the other parties are willing to stipulate that they are facts.

Mr. O'Connor: Your Honor please, the Immigration and Naturalization Service has the petition here and all of the facts and all of his records before he came to the United [33] States.

The Court: Is he released on bail now?

Mr. O'Connor: Yes.

The Court: On a deportation warrant?

Mr. O'Connor: Yes.

The Court: How much bail? $500?

Mr. Reynolds: $1000. He was arrested on May 9th.

The Court: And his wife?

Mr. Reynolds: And his wife also. She was also released on $1000 bond.

The Court: By order of the Attorney General?

Mr. Reynolds: Yes, your Honor.

Mr. O'Connor: And that proceeding is still pending for final conclusion in the Immigration and Naturalization Service.

The Court: You mean you will be able to produce evidence as to whether or not at the time that bail was fixed the Department of Justice or the State Department of the United States had any information concerning these proposed charges?

Mr. O'Connor: Not these charges.

The Court: These charges I am talking about.

Mr. O'Connor: No.

Mr. Reynolds: Your Honor, I might state to the court that this man is only charged by the Immigration Service with [34] staying unlawfully past the time of his permitted visit.

The Court: I know that.

Mr. Reynolds: In other words, no charges by the Department of State *or* the Department of Justice have been made against him.

The Court: I am not asking that. I am asking whether or not they knew of these charges to be made by the Yugoslavian government.

Mr. Reynolds: The Department of State did know of these charges to be made by the Yugoslavian government.

The Court: At that time?

Mr. Reynolds: Yes, or approximately these charges.

On March 31, 1951 the Yugoslavian ambassador at Washington addressed a note to the Department of State requesting Mr. Artukovic, the arrest of Mr.

Artukovic, on charges, the exact nature of which are unknown, because that note has been held confidential by both the Department of State and the Yugoslavian government.

We do know the Department of State replied on May 14, advising the Yugoslavian ambassador that the man has been arrested and advising that if the deportation was not effective then the Yugoslav government would be at liberty to bring further charges.

Now we can only assume from the additional information in the notes that the charges made on March 31st were of a [35] political nature, because otherwise the Department of State would have been bound to issue a mandate to its officials or to the Department of Justice, to the United States Attorney, requesting the arrest of this man if he had been charged on March 31 with crimes extraditable under the treaty.

We ourselves are unable to produce that note. The production of that note should be within the power of the attorney for the Yugoslavs.

Mr. Walker: I will produce a copy of the letter, if it will aid counsel.

The Court: Do you have it here?

Mr. Walker: I have that letter, and I also have a subsequent letter of May 21, which is I believe more material.

Mr. Reynolds: You have the note of the Yugoslav government dated March 31, 1951?

Mr. Walker: No, I do not.

Mr. Reynolds: You see, there it is again, your

Honor. All they have is the response of the other people. It is another indication of what we believe to be bad faith in this matter.

Mr. O'Connor: Your Honor please, I think it should be pointed out that the Yugoslavian government made a request to the State Department to turn over——

The Court: That is just what he said, on March 31st.

Mr. O'Connor: That is right, and at that time there was [36] no allegation made that those offenses were the reason for turning him over.

The Court: How do you know?

Mr. O'Connor: Because he was charged as a war criminal.

The Court: Then I misunderstood Mr. Reynolds' statement. You said you didn't know.

Mr. Reynolds: Yes, your Honor. You can only assume from the language of the State Department's reply—I believe I have that here also—I will read this into the record if your Honor will permit it.

The Court: We will get around to that later.

Mr. Reynolds: Well, the language that we are quite interested in says:

"In this connection it is pointed out that, in accordance with the provisions of Title 18, U.S.C. Section 3184, extradition from the United States can be effected only on the basis of a treaty or convention of extradition."

In other words, the State Department was advising them impliedly in diplomatic language, as

your Honor is doubtless aware, that the charges which they had made were not those that could be supported under the treaty. And if the Yugoslavian government is in good faith, let them produce that note on March 31, your Honor.

The Court: Very well. [37]

Have you completed your opening statement, Mr. O'Connor?

Mr. O'Connor: Very well, your Honor.

Now, your Honor please, the next point of law which the court here will want to hear about, and possibly I think already knows more about, will be that we are here asking the court to release this defendant on bail when the offenses charged is a capital offense. As far as the law in the United States Federal Rules of Criminal Procedure, there is no ruling one way or the other which can either be produced by the respondent or ourselves. So, your Honor please, we have to refer next to the law of the State of California and the law of the State of California is that the courts do have the right to release a man on bail where a capital offense is involved in the cases where the evidence presented and the proof presented of his guilt are not great.

Now in the present case there is absolutely no evidence presented, so we are asking this court here to release this defendant on bail. There is not one single fact, not one single piece of evidence before the court or in this record, that says that he did commit those offenses or show that he committed those offenses. So under the prevailing law, even though this is a capital offense that is alleged, this court

does have the right to release this defendant on bail if the court so finds from the surrounding circumstances that the proof presented is not great. [38]

The Court: Excuse me just a moment.

Have you made a demand upon the United States Attorney in this proceeding for a copy of the Yugoslavian note?

Mr. O'Connor: No, your Honor, we haven't got the note.

The Court: Do you demand it?

Mr. O'Connor: No, we don't——

Mr. Reynolds: Sure, we demand that note.

Yes, your Honor, we would like very much to see that note.

The Court: Make up your collective minds.

Mr. O'Connor: Your Honor please, so far as this offense being a capital offense, there is no authority that is available to either party that would say that this court doesn't have the right, if it so desires to exercise it, to release this petitioner on bail pending the hearing.

Now, your Honor please, I think we have possibly already covered it, but in view of the internal strife, in view of the opposition of the Communist pronouncements and manifestations and all that upheaval going on at that time, the court can see that there was a terrific political strife occurring here at the time these offenses occurred. And, your Honor please, there is a leading case in which a killing occurred in Italy where the Fascists and the anti Fascists were involved, and in that case the court held where the killing occurred that that was a kill-

ing of [39] political character and for that reason it wasn't subject to extradition. That is another factor which this court here can take into consideration.

Now, your Honor please, the respondent may place some evidence on the fact that the petitioner here was forced to flee the Yugoslavian government under an assumed name to hide his identity, which is very true, and which we have admitted here and which we show why it was done, and at that time too the court may take this into consideration, that Tito's name was Joseph Brozonic, so that they were all in it, they had trouble enough keeping those names straight over there without all the other internal strife that they had.

Now, your Honor please, the course of the manner in which this government is operating over there is to pick out and bring back to justice, as they call it, all those who have been opposed to the present regime over there, and by one device or another they have gathered them all. Here is one in the United States, in the free world, here is one who knows the internal operations over there. Here is one that they would like more than anyone else to have brought back and to do with as they ordinarily do.

So, your Honor please, in relying upon the Gannon case and the law that this court undeniably has the right to release this petitioner on bail if it so desires, and relying upon the ends of justice, as the Gannon case pointed out were [40] to be served by releasing him, so all he asks for is a chance to have

his facts prepared and have a chance to present them right. He will be in court. There is no place that he would dare go other than to stay right here in the jurisdiction of this court and stay within the jurisdiction of the Immigration and Naturalization Service. It is on his proceedings that are now pending with the Immigration and Naturalization Service upon which he holds his whole life. His whole hope for himself and his family depends on the final decision to be made by the Immigration and Naturalization Service.

So this court here is in the very unusual situation of having before it one who, by the very nature of this whole proceeding and of the surrounding facts in it, would never under any conditions try to get away from this court. This is his court of last resort. Every step that is taken here is a step determining this man's future life.

For that reason every consideration should be given to him and the ends of justice should be upheld so that he has full opportunity to present all his facts, and after all his facts are presented and they are presented to the hearing officer, and then if a determination of some kind is made, at least he will have had the chance to present his facts and will have had a chance to do so in a fair manner, eliminating all the obstacles of trying to confer in jail. If your Honor please, this man could be in jail for as much as [41] a year. All of his witnesses, all of the evidence, and the events that occurred here are all in Yugoslavia. This whole procedure is at the expense of the Yugoslavian government. This

defendant here has a right to ask for his witnesses who are present and who can prove any of these facts. They have a call on the government over there to have these people brought over here and present them at the hearing. To do that and clear with the government in Yugoslavia as well as to clear with the State Department is going to take many, many months, and there are going to be a great many obstacles in getting that procedure all cleared out. You can imagine what difficulty we will have trying to have Archbishop Stepinac, whom Tito has in jail for a term of 16 years, who knows about these facts, trying to get the material from him, the evidence from him. The court can see that this procedure here is going to be headed for a long time and it doesn't seem that it is the manner of our courts over here to hold one in jail for a period that long, especially when there is not one single fact of any evidence filed by the Department at this time.

So, your Honor please, considering those surrounding circumstances and the fact that the law undeniably gives to this court the right to release this petitioner on bail, I respectfully ask that he be released on bail pending his extradition hearing date, and that I guarantee this court that [42] he will be here on that date.

The Court: Do you demand the document of March 31?

Mr. O'Connor: No, your Honor.

The Court: Consult with co-counsel. He says yes. I do not know.

(Conference between counsel.)

Mr. O'Connor: We seem to have a division of opinion, your Honor.

The Court: If you demand the document, the United States Attorney is present and I will order him to produce it, or a copy of it.

Mr. O'Connor: Well, it will come in the course of assembling all of the evidence for the extradition hearing.

The Court: But you are saying, and you have said, that the government of Yugoslavia has made a demand upon the United States for the production of this person not as a murderer but as a war criminal guilty of a political offense, and have said that they did that as early as March, which is many months prior to the signing of the warrant here for his arrest by the Yugoslavian consul.

Mr. O'Connor: That is right.

The Court: It would therefore seem to me to be very material in connection with the matter of determining whether or not he should be freed on bail at this time.

Mr. O'Connor: For that reason, your Honor please, we [43] make a demand that it be delivered into court.

The Court: Very well. The United States Attorney is ordered to produce it, or a copy of it.

Mr. Binns: Your Honor, I of course, as the court understands, do not have possession of the document.

The Court: I understand you are the attorney

for the Government of the United States, are you not?

Mr. Binns: That is correct, your Honor.

The Court: There is only one Government of the United States, is that right?

Mr. Binns: That is correct. (Applause.)

The Court: I cannot have any demonstration of any kind, and if any more occurs it will be necessary to evict the spectators from the courtroom.

Mr. Binns: I further feel, your Honor, that I doubt if the court has authority to order the production of an executive document such as that is.

The Court: It is so ordered.

Mr. Binns: However, I am not in position to give you any authority on that at this time.

Now would the court give us until sometime this afternoon to examine the authorities on that point?

The Court: Surely. I think you had better get on the teletype and see if you can get a copy in the meantime too.

Mr. Binns: Well, I feel, your Honor, we should examine [44] the authorities first.

The Court: I think the Attorney General will probably have some authority on it, but the order is made to produce the document.

Mr. Binns: Would the court withdraw the order and hold it until 2:00 o'clock so that we can have a chance to examine into it?

The Court: No, I will make the order. You understand you are ordered to produce it or a copy of it.

Mr. Binns: Your Honor, I don't feel that it is

fair to our office to put us under such an order under circumstances such as this. Of course the court realizes that I am an officer of the court and I have no desire or wish to——

The Court: I understand.

Mr. Binns: ——to flout the order of the court and I don't have the document in my possession.

The Court: I realize that, counsel, but some person in the United States Government does have it. The United States Government is a party to this proceeding.

Mr. Binns: We have a further question here, your Honor. I don't believe that there has been any evidence before this court that such a document exists. Now counsel has stated that he thinks that there is such a document, but I doubt if he can testify that he has ever seen it or that it actually exists. [45]

The Court: He just said that he cannot testify that he has ever seen it; he said that that is the trouble, that he never has seen it.

Mr. Binns: In other words, if the court here had actually found that there was such a document, I think you would be in a position to ask him to produce it.

The Court: I do not think it is necessary on an order to produce, counsel.

Mr. Binns: All right, your Honor. May we have until 2:00 o'clock this afternoon?

The Court: Surely.

Mr. Walker: Your Honor, I have in my hand a document which may solve some of our problems. It

is a copy of a letter dated May 21, 1951 from the Department of State to the Yugoslav Embassy and certified as a true copy under the seal of the Yugoslav Embassy. It refers to the preceding correspondence without stating exactly what was said.

I just showed it to Mr. O'Connor. It might be helpful to the court to consider it before insisting on the other ruling.

Mr. Reynolds: Yes, your Honor. May we ask that the counsel produce the State Department's note to the Yugoslav Embassy dated May 14, 1951, which will clearly show that there was a note of the Yugoslav government dated March 31?

The Court: You are entitled to the order. [46]

Mr. Walker: Yes, I will produce it. This is not certified.

The Court: The order is to produce the copy—is that dated March 31?

Mr. Walker: No, that is the letter which Mr. Reynolds referred to as of May 14. As to the other one, I do not have it.

Mr. Reynolds: It is a very striking coincidence, your Honor, that the counsel for the Yugoslavian government has both notes of the State Department but he does not even have the note of his own government to which the State Department's notes are responsive.

The Court: I think that I would be justified in ordering counsel for the Yugoslavian government to produce the note that is referred to in those documents.

Mr. Walker: I have no objection to doing it.

your Honor, but you realize that I have more difficulties perhaps than Mr. Binns in getting the properly certified copies and getting it out here. It would mean some short delay.

Mr. O'Connor: This is a pretty serious matter, and I think they should go to extremes to get that material over here.

The Court: Very well. The order will be made. How long will you want, Mr. Danielson, to make your statement?

Mr. Danielson: If your Honor please, just a matter of [47] a few minutes, two or three minutes, I believe, would suffice.

The Court: How long will you want, Mr. Walker?

Mr. Walker: I would want about 20 minutes.

The Court: Very well. We will recess until 2:00 o'clock.

(Whereupon, at 12:00 o'clock noon, a recess was taken until 2:00 o'clock p.m. of the same date.) [48]

September 17, 1951; 2:00 o'clock p.m.

(Other court matters.)

The Court: Proceed with the Artukovic matter. Had you completed your statement, Mr. O'Connor?

Mr. O'Connor: Yes, sir.

Mr. Binns: Your Honor, I have communicated with the State Department in Washington. I find that there is a diplomatic usage in these matters that determines that any note sent by a country remains the property of that country. The Depart-

ment of State has released to counsel and to the proceedings our notes of reply to Yugoslavia. They have no power or authority under the international usage to release the notes of Yugoslavia without the permission of the Yugoslavian government.

I feel in view of that, your Honor, that the United States Attorney should be relieved of the court's order to produce the document in question if it exists.

The Court: I will not relieve you now. I will examine the law with relation to the subject.

Mr. Binns: Yes, your Honor. Then, your Honor, I have to commence trial before Judge Mathes at 2:30, and if I may be excused until that time.

The Court: Very well.

Mr. Walker. [49]

Mr. Walker: I want to comment on the request for the documents, your Honor.

The Court: Yes.

Mr. Walker: During the noon recess I received a telephone call from the Yugoslav Embassy in Washington. I hope that I am not tripping over any diplomatic usage here, but they expressed the view that there was no objection to the production of a copy of the letter of March 31 sent to the State Department, and advised me that they were forwarding to me a certified copy in the mail. It should be in the mail about now. It should reach here probably tomorrow. I cannot guarantee that it will, however.

The Court: Could you get the text of it telegraphically in the meanwhile?

Mr. Walker: I doubt if I can, your Honor, for the reason that it is now after 5:00 o'clock there and probably the telegram would not get here any sooner than the letter.

I will make an attempt to do so if the court cares to adjourn until tomorrow morning, but I can't promise it.

The Court: Is there anyone you could communicate with here who could request that it be sent telegraphically to you so we could have it either by telegram or a certified copy tomorrow morning?

Mr. Walker: If we could have a two- or three-minute recess, my secretary is in court here, and I will have her [50] telephone a wire.

The Court: Very well. We will have a short recess. We will just wait for you.

(Short recess.)

The Court: I understand that letter was produced, the letter of May 14?

Mr. Walker: I have the letter of May 14 and the letter of May 21—that is from the State Department to the Yugoslav Embassy. I do not have the original letter from the Yugoslav Embassy to the State Department.

The Court: That is the one of March 31?

Mr. Walker: Yes, and there is an intervening oral conversation between the legal representatives of the Embassy in Washington and the State Department which comes in between these two letters.

The Court: And is referred to in one of them?

Mr. Walker. The oral conversation is not.

The Court: The only document referred to is the March 31st letter?

Mr. Walker: That is all.

The Court: And that you do not have?

Mr. Walker: That is right.

The Court: Very well. Will you mark them for identification then?

Mr. Walker: I think, your Honor, the last letter——[51]

The Court: Do you wish to examine these?

Mr. Reynolds: I would like to examine one of them.

Mr. Walker: I think the last letter of May 21 really explains the whole situation.

(The document referred to was passed to counsel.)

The Court: Mr. Danielson?

Mr. Danielson: If the court please and counsel, on behalf of the respondent, the United States Marshal, I wish to state the position of the marshal, that he is holding Mr. Artukovic under good and lawful process, namely, the commitment of the United States Commissioner, Howard V. Calverly, which was issued after Artukovic was brought before him in response to a warrant issued by Mr. Calverly, which, in turn, was predicated upon the sworn complaint of the diplomatic representative of the Yugoslavian government.

As to the question of bail, we wish to point out to the court only that in the first place this is a civil matter rather than a criminal matter, that the ex-

tradition proceedings themselves are not in the nature of punishment but more or less in the nature of an agreement to deliver certain persons even though those persons may have been charged with crime.

But inasmuch as the laws relating to bail are in the criminal code, those laws should have been considered, and probably were considered, by the Commissioner. [52]

Section 3141 of Title 18, the law relating to bail, provides that in a capital offense in the event bail is granted the bail should be granted by a court or a judge of a court, but there is no provision for a Commissioner to grant bail. So of course Mr. Calverly, being guided by those provisions, would not have been able to grant bail in the first place, and the matter is properly before your Honor in the event your Honor should feel that this is a bailable matter.

As to whether or not bail is permissible in extradition proceedings pending examination, the view of the authorities seems to indicate that there is some conflict.

The leading case on the matter and the only case decided by the Supreme Court is the case of Wright vs. Henkel, in which case the court at some length went into the question of whether or not this was a bailable matter, and denied bail in the particular case, in effect did so, but did state that they were not willing to state that under some circumstances and in some cases that bail might not be in order.

On the basis of that nearly all of the reported cases have denied bail. However, there have been

two cases where bail was granted. One was brought to the attention of the court this morning by Mr. O'Connor, the case of In Re Gannon.

The Court: I think in those where they denied bail, did they not also indicate that they regarded themselves as opposing the power to grant bail?

Mr. Danielson: There is talk to that effect. Yes, I believe that since the case of Wright vs. Henkel the opinions have indicated that the power exists but that it should be exercised only under very limited——

The Court: And unusual circumstances.

Mr. Danielson: That is correct.

The two cases in which bail was admitted were the case of In Re Gannon, a Pennsylvania case, District Court, and the person being extradited in that case was charged with obtaining money under false pretenses. It was a bailable offense in Pennsylvania, it was a bailable offense in Canada, the demanding state. In that case the court released the man on bail, stating that even if he were returned to Canada and punished, the punishment would not be necessarily so great as would be his in the event he should jump bail. Then he would have two nations with almost unlimited resources looking for him.

The other case is In Re Mitchell, which was decided in 1909, in New York, by Judge Hand, and in that event the person being extradited was admitted to bail for a period of five days during the pendency of a lawsuit in which he was the party plaintiff and necessarily had to attend.

So it does appear that the power to admit to bail

does exist to be exercised as your Honor has indicated.

The respondent, the marshal in this case is not in [54] possession of the facts which delineate the full circumstances of this case, but since the petitioner and counsel for the Yugoslavian government are present in court we submit that they are better able to apprise the court of the circumstances of the case, and leave the matter entirely up to the court's sound discretion.

The Court: Have you undertaken any research on the question as to whether or not the treaty of 1901 between the Kingdom of Servia and the United States is in force and effect today with the Yugoslavian government?

Mr. Danielson: I can state only to the court that I have been informed, and I do believe, that there is a Department of State bulletin, No. 711.60 H/1 and 3—which I do not possess—which holds that the Servian extradition treaty which we are interested in here is applicable to the present government of Yugoslavia. I do not have that bulletin.

The Court: Do you have any history of how it came into effect?

Mr. Danielson: How the bulletin came into effect?

The Court: How it is still in effect. I think the court can take judicial notice of the fact that the Kingdom of Servia is not the present government of Yugoslavia.

Mr. Danielson: I do not know.

The Court: The treaty was between the Kingdom

of Servia [55] and the United States. I just read it through and I do not recall any reference to successors in it, and that treaty was approved by the Senate.

Mr. Danielson: That is correct.

The Court: Have you, Mr. Walker, conducted any research as to the history of the treaty or whether or not this treaty was renounced?

Mr. Walker: I do not have that history.

The Court: By Tito and the Yugoslavian government at any time?

Mr. Walker: I have no information on that subject as yet.

The two letters which counsel are examining, however, from the State Department both refer to the treaty as in full force and effect as to Yugoslavia. I have sent for the other bulletins, but they have not yet been received.

The Court: Very well. Have you concluded?

Mr. Danielson: I have, your Honor.

The Court: Mr. Walker.

I am letting you proceed at this time, Mr. Walker, on the distinct understanding that the document called for will be produced. If it is not produced I think probably the only effective means of this court exercising its power is not to permit your client to appear as a party to this action until they do. [56]

Mr. Walker: I can only say, your Honor, that I was advised about 1:00 o'clock that it would be put in the mail immediately.

The Court: Very well.

Mr. Walker: And to pursue that matter for a

moment about the correspondence, and attempt to clarify what it seems to me is a rather collateral issue, I am advised that this letter did suggest the extradition——

The Court: Excuse me, counsel.

By the way, Mr. Binns, you heard Mr. Walker's statement that the Yugoslavian government has no objection to the release of the note. I suppose you will communicate that to the State Department and request them for their copy.

Mr. Binns: I imagine, your Honor, that Mr. Walker can't speak for the Yugoslavian government except in this courtroom. However, I will advise the State Department that their representative in this courtroom says they have no objection.

Mr. Walker: I will certainly subscribe to that limitation, Mr. Binns.

The Court: Let me see the letters. They will be marked as Petitioner's exhibits.

Mr. Reynolds: That is all right with us, your Honor.

The Court: Petitioner's Exhibits 1 and 2.

(The documents referred to were received in evidence and marked Petitioner's Exhibits Nos. 1 and 2.) [57]

The Court: I anticipate that I shall take evidence in this case, some—I do not know how much—and that the statement made this morning by Mr. O'Connor and Mr. Reynolds will be deemed to be a statement of what they expect to prove in so far as they touched on material subjects with which this

court can be concerned. I realize Mr. O'Connor went a little far afield over things concerning which I have no jurisdiction.

Mr. Walker: Yes, your Honor.

In that connection, I realize the handicap I am under, being 3000 miles or possibly 6000 or 7000 miles away from the type of evidence which you may want produced. I trust that sufficient time will be allowed to obtain it.

To get back to the letters, your Honor, I am advised that this letter of March 31 suggested the extradition of Artukovic as a war criminal.

The Court: Let me read these two letters first. One is dated *March* 14 and the other May 21.

Mr. Walker: I believe the letter of May 14 is an answer to the letter in question. In between the letter of May 14 and May 21 there was an oral conversation between representatives of the Embassy and the State Department, to which I wish to advert when you finish.

The Court: Proceed.

Mr. Walker: After receipt of the letter of May 14 there [58] was a conversation between Dr. Brunner of the Yugoslav Embassy and representatives of the State Department, in which the legal aspects of the case were discussed. There was considerable conversation to the effect that one could be a war criminal and also a common criminal. In that respect I may say—and, if necessary, will prove—that the accused here, who was known as the "Butcher of Bosnia," I believe, is considered by the Yugoslavian government as one of the major war criminals. He

was, I believe, No. 2 in the series of command in the Nazi puppet government. In such position he is charged with the responsibility of the deaths of about 500,000 Servians and Croats, also with the death of about 30,000 Jews, which constituted almost the entire Jewish population of Croatia.

I give you that simply as background material because it is not concerned at all in this hearing except as it may reflect on the character of the petitioner as being entitled to bail.

The Court: I suppose at some appropriate time credible evidence to substantiate such charges will be produced, that is, credible in this country, or must we just accept that statement regardless of the veracity of it?

Mr. Walker: I said he is considered there in that capacity.

The Court: By the present Yugoslav government? [59]

Mr. Walker: Yes. He is not so charged here. He is charged with 23 specific murders, eight or ten of them involving children I think under 10 years of age.

Under the terms of the treaty, if he is returned to Yugoslavia he can be only tried for the specific charges upon which he is extradited. He can be tried for no other without being given a chance to return to this country. That is under the terms of the treaty itself.

The charges must be substantiated here within the two months period provided for his detention upon evidence which is admissible in our courts and upon

a charge which is a crime in our courts, so that we can forget some of the fog or smog about the method of trial in Yugoslavia or the implication that he would be tried on other charges or not given a fair trial upon these charges, because before he can be extradited the evidence has to be produced here that will justify the charge and that evidence must be admissible under our own rules of evidence.

The Court: That is to say, it must justify a charge of murder in the United States under the United States law?

Mr. Walker: That is correct, under the laws of the place where the party is found, and in most of the cases that is considered under the California law.

The Court: That is a specific term of the treaty?

Mr. Walker: Yes. [60]

Now getting a little bit far afield, but to get back to this conversation——

The Court: Well, now, do you expect to produce evidence to that effect?

Mr. Walker: I can, your Honor, given sufficient time to get a person here who took part in the conversation. This conversation was repeated to me over the telephone this noon.

The Court: Well, I cannot take judicial notice of it so unless you can produce evidence I do not think that I can.

Mr. Walker: Very well. I can forget it for the time being. But the conversation led up to and was in between the letters of May 14 and May 21, and

I am advised that the letter of May 21 is the last word on the subject.

You will note that the letter refers to the treaty as in full force and effect. It says that the State Department—may I refer to the letter, your Honor? I want to have this correct in the record.

It states as follows:

"It is pointed out for the information of the Embassy of the Federal Peoples Republic of Yugoslavia that it was not intended by the note under reference"—(which is the note of May 14, 1951) —"to imply that it would be necessary for the Embassy to await the outcome of the deportation proceedings instituted against Dr. Artukovic before [61] making a formal request for the extradition of the accused or before a warrant could be obtained for the provisional arrest and detention with a view to the extradition of the accused. The formal request for the extradition of Dr. Artukovic may be filed at any time and, acting in accord with the provisions of Title 18, U.S.C., Section 3184, a duly authorized representative of the Yugoslav government, possibly one of its consular officers in the United States, would be at liberty to swear out a warrant for the arrest of the accused with a view to his extradition notwithstanding that deportation proceedings are pending. The Department of State cannot give any assurance, however, as to what action may be taken following the issuance of such a warrant of arrest since that will be within the jurisdiction of the judicial branch of the government.

"Finally, the Department of State wishes to point out that except for the possible receipt by it of a formal request for extradition pursuant to the treaty of October 25, 1901, in force between the United States and Yugoslavia, it is without authority to act in the matter until it shall have received from the extradition magistrate a transcript of the proceedings in the hearing required by Title [62] 18, U.S.C., Section 3184."

Now the presence of the accused in this country was not discovered by the representatives of the Yugoslav government until early this year. I don't know the exact date, but I assume that was just prior to this letter of March 31st.

After this resulted communications, letters between the Embassy and the State Department, the Yugoslav government decided not to risk the departure of Dr. Artukovic and took the necessary steps for his provisional arrest and detention under the terms of the treaty upon simple charges of common murder. This they have done. This was filed, warrant issued and the arrest made.

Now there are some things which I think should be pointed up. In the first place Yugoslavia is a friendly nation. They are with the Western powers. They are one of the bulwarks against the Russian border. I am assuming that the treaty of extradition is in full force and effect between the United States and Yugoslavia, and that is acknowledged by the letters from the State Department.

To get to the treaty itself, it provides for the

provisional arrest—this is Article II—and detention——

The Court: Pardon me. Mr. Brand, will you bring Volume 32 on my desk.

Mr. Walker: Do you wish me to read this?

The Court: Wait until I get my copy and then I can follow [63] you better.

(The volume referred to was passed to the court.)

The Court: Well, Article I provides that they shall be delivered up, provided that they shall be done only upon such evidence of criminality as, according to the laws of the place where the fugitive or the person so charged shall be found, would justify his or her apprehension and commitment before trial of a crime or offense having been committed there.

That is what you were saying a while ago, or what Mr. Danielson was saying, that before a judicial order or any order can be made for his extradition there must be an inquiry and satisfaction that the evidence produced would justify his or her apprehension or his accusation for murder under the laws of the United States.

Mr. Walker: That is correct.

Now I was wrong in my citation. It is Article IV of the treaty, the last of the three paragraphs. It provides:

"The provisional detention of a fugitive shall cease and the prisoner be released if a formal requisition for his surrender, accompanied by the

necessary evidence of criminality, has not been produced under the stipulations of this treaty, within two months from the date of his provisional arrest and detention." [64]

The Court; Article VI of course is pertinent, too:

"A fugitive criminal shall not be surrendered if the offense in respect to which his surrender is demanded be of a political character, or if he proves that the requisition for his surrender has, in fact, been made with a view to try to punish him for an offense of a political character."

That makes the communication of March 31 material here.

Mr. Walker: Yes, it does.

The Court: Continuing:

"If any question shall arise as to whetner a case comes within the provisions of this article, the decision of the authorities of the government on which the demand for surrender is made, or which may have granted the extradition, shall be final."

Mr. Walker: That I think, your Honor, refers to the decision of the State Department which, under Section 3184 of Title 18, ultimately passes upon the findings and the record and hearing before the Commissioner.

There is a problem whether the material the court just read in Article VI——

The Court: Well, I do not know unless counsel are agreed on that, whether or not the Federal Rules of Criminal Procedure shall be applicable at all.

Says Article III: [65].

"The extradition of fugitives under the provisions of this treaty shall be carried out in the United States and in Serbia, respectively, in conformity with the laws regulating extradition for the time being in force in the state on which the demand for surrender is made."

Now there may be a conflict—you have had more opportunity to examine the question than I—between the Federal Rules of Criminal Procedure and Section 3184 of Title 18, which is old Section 5279 of the revised statutes referred to in the previous case.

Mr. Walker: Substantially so.

The Court: Have you come to any conclusion or do you have any views as to whether or not there is a conflict or whether or not one prevails over the other?

Mr. Walker: I think the extradition sections prevail, your Honor, and that the rules of criminal procedure are not applicable.

The Court: Under the rules of criminal procedure the judge makes the final order on a review of the Commissioner's order. It is your view that those provisions are not applicable?

Mr. Walker: I do not believe they are applicable, your Honor. The matter is specifically covered by the extradition laws referred to in the treaty, that is, Sections 3184 and the [66] following sections. And I think it is quite material on the point we were discussing, that is, the question of political offenses under Article VI. I believe that is a matter that can be tried before the Commissioner before

whom the matter is pending, not on an application for bail.

The Court: I think perhaps that is true, but nevertheless I believe that the court on an application for bail is entitled to receive some evidence concerning what might be offered in order to make a determination as to whether or not discretion should be exercised to release him on bail, and while a writ of habeas corpus is a civil proceeding, if there is no provision for inquiry such as that, then it results in it being a criminal proceeding, that is, denying the man his liberty and committing him to jail such as other criminals are.

Mr. Walker: The authorities on that are pretty clear, your Honor, on the question of the propriety of releasing the prisoner on bail. I was discussing a point and we shifted.

The Court: We were discussing the point of the political character of the offense and as to whether or not there should be any evidence before the court on an application for a writ of habeas corpus.

Mr. Walker: It is my contention that that is one of the issues to be tried before the Commissioner.

Now your Honor referred to what evidence we would produce. [67] The only evidence before the court now, if it be considered in the light of evidence, is the complaint on file before the Commissioner. The complaint charges the accused with 23 murders. The treaty provides, and I think that supersedes all the other law on it, for the arrest and detention of the accused for 60 days within

which time the evidence of criminality can be presented.

It seems to me that it necessarily follows that that evidence must be produced to the Commissioner and that the prisoner shall be detained for 60 days until such evidence is produced. At that time the question of whether that evidence constitutes political offenses or not can be tried before the Commissioner, and that is the proper forum in which it should be tried.

The Court: Do I understand your position to be then that this court has no jurisdiction to grant bail?

Mr. Walker: No, your Honor, I do not. I think the case of Wright vs. Henkel is controlling. You already referred to that. In that case bail was not granted but the court just refused to say it didn't have the discretionary right.

I think that discretionary right must be exercised in the light of the treaty and in the light of the cases which comment on the release on bail in extradition proceedings.

Now the treaty flatly provides for the detention for 60 days during which time the evidence of criminality shall be [68] produced. The cases on the subject—and you will find them if your Honor cares to refer to my memorandum of points and authorities attached to the appearance——

The Court: Some document here had a copy of the complaint. I do not remember what it was. I do not seem to find it.

Mr. Walker: I can find it for you in just a

moment. It is attached to the petition for a writ, Exhibit A in the petition.

The Court: Very well. I have it. Go ahead, counsel.

Mr. Walker: Now in considering the discretionary power, the proper use of discretion in granting or denying bail, your Honor, there are several things to be considered which involve the accused himself.

In the first place, if the allegations of the complaint are correct, he is already a fugitive. He has shown a tendency to flight. He has shown an ability to make a successful flight, in getting from Croatia clear over to this country and in successfully concealing himself here for a period of several years.

We have to consider that we are only one hundred and thirty miles ourselves from the Mexican border. There is nothing to stop him if he is released on bail from driving across the border and no way of getting him back if he goes. So far as I know—and I don't know anything either way, but [69] I doubt very seriously if there is any extradition treaty with any of the countries south of here, between those countries and Yugoslavia. A man would be perfectly safe if he got there.

The Court: Mr. Reynolds was looking rather knowingly when you were making that statement.

Mr. Reynolds: I thought the gentleman was going to make a statement that there was no treaty of extradition between the United States and Mexico.

Mr. Walker: Now there has been much to-do

already today about the fear of death which the accused has if he returns to Yugoslavia. I am not arguing whether that is the case or isn't the case, but his counsel says if he goes back there it is certain death. I am considering that statement only in the light of the application for release on bail. There can be no stronger motivation for flight than the fear of death. If he is released on bail, and the evidence gets here in the 60 days, and it is strong and convincing, it would appear to me that the possibility and probability of flight are so acute as to completely convince the court that bail should not be granted.

Now on the law, forgetting for a moment the facts involving the accused, I found only the same two cases that Mr. Danielson did where bail has been granted. Every case that I have read the court considered that the forfeiture of bail to [70] a demanding government would not be a satisfactory substitute for the person of the accused. They have all indicated an extreme reluctance to grant bail, that it should be done under only the most unusual circumstances. And I would like to read, if I may, from my memorandum, from page 7—this is from In Re Klein, 46 F. (2d) at 85:

"We are dealing with a national of the demanding country. He seeks bail pending examination. Indisputably he is not entitled to it as of right. (Citing Wright vs. Henkel.) Undoubtedly also the court has power to grant it. Nevertheless, we have been admonished to exercise the power very sparingly and only when the justification is pressing as

well as plain. (Citing In Re Mitchell and U.S. ex rel McNamara vs. Henkel.)"

And the court states (and this fits the situation here perfectly):

"Here I see nothing out of the ordinary. Customarily, when removal is resisted, several weeks must intervene after arrest before any European foreign office is prepared to present evidence in support of its application. If, because of the time requisite to get from London proof that is to be offered before the Commissioner, the alleged fugitive were now enlarged on bail, then there should [71] be bail, when asked for, in practically every international extradition case. If such a rule were adopted, not alone would the judges exceed the proper limits of their authority as declared by the highest court, but manifestly they would incur grave risk of frustrating the efforts of the executive branch of the government to fulfill treaty obligations."

The case which I just read from refers to the McNamara case, 46 F(2d) 84. This case I think expresses the most convincing argument why bail should not be granted pending a 60-day detention period.

"So far as the admission to bail of persons in the position of this relator is concerned, I see no reason to depart from the practice I have for some years adhered to—that the power to admit to bail exists is admitted; that it is ever advisable to admit to bail prior to the date of a reasonably early examination is denied. When the examination day comes

and the complainant is not ready to proceed after having had a reasonable opportunity to communicate with the region from whence the request for extradition emanated, it is then time enough to ask for bail.

"Yet even then it is not easy for me to conceive of circumstances that should move the court [72] to admit to bail and not to dismiss the proceeding. In other words, admission to bail and extradition should be in practice an unusual and extraordinary thing, for the whole proceeding is opposed to our historical ideas about bail.

"Bail is taken in all our courts on the theory of punishing, if not the accused, at least his friends, in the event of his absconding; but there the party seeking to inflict punishment is the commonwealth —state or national.

"Persons accused of crime in foreign lands have not, presumably, violated the laws of this country; it is therefore absurd for our state or nation to collect money from the friends of the accused. If the bail, however, be so drawn as to cause the money collected on forfeiture to flow to the demanding government, the situation from an international viewpoint is ridiculous, if not insulting."

What could be a better statement of the situation we have here? Counsel suggested that $50,000 bail would be adequate. Do any of us consider for a moment that the government of Yugoslavia, assuming a bond could be drawn that way, would take the $50,000 and be happy about the situation? Of course they would not. I don't think any amount

of bail forfeited [73] to the Yugoslavian government would substitute for the mutual contractual obligation under the treaty to deliver the person of the accused if the provisions of the treaty are met.

Now if this man be held for 60 days and the evidence does not come forward as we anticipate it will, certainly I could not conscientiously urge his further detention. We simply want him detained until the opportunity granted by the treaty, until we can meet the opportunity granted by the treaty, to obtain and introduce the evidence. I don't anticipate that this case will go on as long as Mr. Reynolds has indicated. However, as the court knows, sometimes we get into cases that go on longer than we expect. But it seems to me that once the evidence of criminality is adduced the other collateral issues or the direct issues under the treaty can be tried within a comparatively short time, and I think the question of the bail might even then be again considered.

But I do not consider that this is the proper time for the release of the accused upon bail, and I do not consider that any possible bail the court would fix would be a satisfactory substitute for the delivery of the person of the accused in the event the extradition proceedings are successfully concluded by the demanding government.

The Court: No bail ever is, if it is forfeited.

Mr. Walker: Yes, your Honor, but where bail is fixed by the statutes of one country, it may not be a satisfactory [74] substitute, but it is so consid-

ered, it is perhaps satisfactory in the sense that it is approved by the legislature, but it is not a satisfactory substitute to the demanding government, which is not our own government here.

The Court: Mr. Walker, I indicated that I would like to hear some evidence and I think one other thing, I would like to have your comment if I should take into consideration in connection with the exercise of discretion the provisions of Article VI. Assuming it is in full force and effect——

Mr. Walker: Is that the one that refers to political offenses?

The Court: Political character, or if he proves that the requisition for his surrender has in fact been made with a view to try to punish him for an offense of a political character.

I notice by the complaint here that these alleged murders were supposed to have been committed January 26, 1942, August 1, 1941, and July 15, 1941, and I can take judicial notice of the fact that Yugoslavia was invaded by Germany on April 6, 1941, prior to the commission of these offenses and that the country was at war. Otherwise, murder being a most serious offense, none except treason or which sometimes amounts to mass murder, so it would seem to me that the court should give serious consideration to whether or not charges of murder might not be made here or might have the color of [75] being made here in connection with an application for bail only in connection with actual warfare.

Mr. Walker: It is conceivable, yes.

The Court: I mean if that is the case—and I do not know how heavily it should be weighed—but if that is the case then all any government would have to do in the event of a force majeure to capture the government when they are at war is to get everybody from every country and bring them back in and charge them with murder.

Mr. Walker: Your Honor, when we consider killings during a period of war, whether they are valid murders or not——

The Court: I understand, people are just dead.

Mr. Walker: It all depends on the philosophy that one adopts. But certainly this is true, that because the country may be at war does not mean that private murders cannot be committed or that murders cannot be committed which are not connected with the war.

The Court: Quite so, but I have in mind your statement at the opening that the present Yugoslavian government looked upon this defendant here as a very important person in connection with the Nazi activities or in connection with the waging of the war.

Mr. Walker: Well, perhaps this is a question of fact, but I cannot contemplate in my own mind the killing of children of the ages alleged in the complaint could possibly be [76] an act of war unless by the dropping of a bomb on an area they were incidentally killed. I cannot include in my own mind——

The Court: I cannot either, but nevertheless the fact remains.

Mr. Walker: ——the killing of children as a political offense.

The Court: There were hundreds of thousands of them killed in all countries by all nations in the last war, and the hands of no nation are clean in that respect.

Mr. Walker: That is very true, your Honor. But the fact that one occupies a political position does not give him power to commit murders outside of legal killings under the laws of his own country.

The Court: Certainly not, but it raises in this case the question here that was anticipated by Article VI of the treaty.

Mr. Walker: Your Honor, it is my contention that that is an issue to be met at the time of the extradition hearing.

The Court: I think that is probably true, Mr. Walker, but at the same time suppose some person is here, is arrested and charged with murder under our laws, with having committed murder in Las Vegas, and he comes before the United States Commissioner and challenges the right to removal—of course now they have to produce the indictment only—but it was [77] not long since where they had to show probable cause. Now is that not what this treaty says and is that not what the sections of the code say, that they have to show probable cause?

Mr. Walker: In effect, yes. It refers to evidence of criminality.

The Court: Now somebody might charge any-

body with murder and get him back there to any place.

Mr. Walker: But this, your Honor, is done in an official capacity by a sovereign nation. I think some full faith and credit must be allowed.

There is a direct contractual obligation by the treaty for a two months detention of the accused pending the accumulation or receipt and production of such evidence.

The Court: I do not know that that can be read that way in view of the decisions that have been made construing similar treaties. It is a provisional detention and the Supreme Court has said that the man has the right to bail, or rather has said that they will not say the court has no power to grant him bail during that period of time, and if they do not produce it within the 60 days—it does not say anything about him being admitted to bail, it says he shall be released.

Now your position in connection with the application of Title 18 and Section 3184 and those following, that they prevail over the provisions of the Federal Rules of Civil [78] Procedure, is based only on the fact that they deal with the special subject and the rules deal with a general subject.

Mr. Walker: That is true, your Honor. If there is any conflict between the two the extradition laws supersede.

The Court: Very well. You have stated your position.

Mr. Reynolds: Your Honor, may I have the

privilege of rising a few minutes to make a few statements?

The Court: Yes. You are admitted for the purposes of this case. If you have anything that will aid the court.

Mr. Reynolds: I hope that I will, sir.

Your Honor, one of the last statements made by counsel for the Yugoslav government is worthy of note. He said that he felt the Yugoslav government, the action of the Yugoslav government, should be given some amount of faith and credit, perhaps full faith and credit.

In that connection, your Honor, I call to your attention the Internal Security Act of 1950, a law passed by the Congress of the United States, and read from it this language:

"Section 2. As a result of evidence adduced before various committees of the Senate and House of Representatives the Congress hereby finds: (1) that there exists a worldwide Communist movement which in its origins, development and its present practice is a worldwide revolutionary movement whose purpose it is by trickery, deceit, [79] infiltration into other groups, governmental and otherwise, espionage, sabotage, terrorism and other means deemed necessary to establish a Communist totalitarian dictatorship in the countries throughout the world through the medium of worldwide Communist organization."

Your Honor, the demanding government in this extradition proceeding is a Communist government, and I ask whether in view of this statement of the

Congress of the United States any court of the United States needs give full faith and credit to the action of such a government.

Now, your Honor, I turn to several other points. One was made by the counsel for the Yugoslav government that this man concealed himself. He apparently has alleged that he has concealed himself consistently since his departure from Croatia, both in Europe and in the United States. Your Honor, I have here a certificate of identity issued by an Austrian authority.

The Court: I had anticipated that you would be given an opportunity to put the petitioner on the witness stand and adduce sworn evidence with relation to factual matters.

Mr. Reynolds: All right, your Honor.

The Court: And you covered in your statement what you propose to prove or say you can prove in your statement this morning, did you not? [80]

Mr. Reynolds: Well, I did but I have actually here a piece of evidence which I will be glad to lay before the court right now, if your Honor would like to see it.

The Court: You lay a foundation for it by regular examination of the witness.

Mr. Reynolds: There is one more item which I can lay today before the court because I had not foreseen that this would come up. Counsel for the Yugoslavian government has indicated that this man hid himself in the United States.

In 1949 a bill was introduced in the Congress of the United States to regularize the resident

status of this man, Andrija Artukovic, an open and public act. Is that concealing yourself, your Honor?

What is more, this man has lived here in this country for three years, and he has not run at any time, even though the United States arrested him in deportation proceedings and placed him under a $1000 bond, which he could easily have jumped to Mexico and escaped.

Furthermore, even after counsel informed him that the Yugoslav government might attempt this proceeding, your petitioner refused to run. He stood firm and said that he depended upon the justice which he was sure the United States would dispense in this case.

Now, your Honor, I would like to point to just three principles in the two cases, In Re Mitchell and In Re Gannon, [81] which we think are approximated in the present proceedings. I might note in the case of In Re Mitchell that Judge *Jand* stated language which indicates that had there been other cases in which bail had been issued under similar circumstances, in other words, he said, "In several cases in this district Commissioners and judges have issued bail under similar circumstances," which I think leaves us the proper deduction that it has not been uncommon, as he indicated by the three or four decisions that are reported, it has not been uncommon to release on bail a man charged in extradition proceedings.

I think it seems of more than passing interest to note upon what grounds Judge Hand thought

bail was justified. In that proceeding he found that this man was likely to lose his whole fortune in a civil trial. That was the principal ground on which he granted bail.

In the proceedings confronting the petitioner, he is likely to lose his life.

The Court: In the next 60 days?

Mr. Reynolds: Not in the next 60 days, your Honor, but the hearing—and that is another point—the examination in this is not necessarily to occur within the next 60 days. I intend to come to that in just a minute.

Also Judge Hand said:

"I am also moved to this disposition from [82] the fact that he has long known of these proposed proceedings and has made no effort to avoid them or to escape."

Your Honor, this man has known of the possibility of these proceedings, he knew of the note of March 31st, he knew that it had been sent, he didn't know its contents but he knew it demanded his extradition and arrest. He made no effort to flee, even though at that time he was only under a $1000 bond.

Now, your Honor, in the case against In Re Gannon, Judge Dickinson said:

"The witnesses must be brought from a distance so that some time must necessarily elapse before it can be known whether the prisoner is the proper subject of extradition proceedings. There is no time within which the hearing must be held short of two months."

In this proceeding, your Honor, the petitioner is somewhat helpless. We have only the bare allegation that he murdered or caused the murder of some 23 persons. We have no idea whether the Yugoslavian government intends to allege that he did this personally, by gun or by rope, or whether he did it by order or in what manner. Since the publicity in this case, your petitioner has received offers of assistance in the way of testimony from persons scattered all over the United [83] States and the world. But your petitioner is unable to determine exactly which one of these persons should be called because he is helpless in view of the lack of evidence supporting this complaint. This means that he must wait, possibly two months, for any evidence to be produced and thereafter request his witnesses.

Now, your Honor, all of the witnesses in this proceeding which your petitioner will call were born in Croatia or Yugoslavia. The Department of State has a regulation promulgated in March of this year which requires a security check in Washington, D. C., of all persons coming to the United States as visitors or immigrants or for any purpose who are aliens who were born in, who resided in or who visited, in Iron Curtain countries.

Your Honor, counsel has had first-hand experience with the result of this regulation alone and when he left Washington two weeks ago the Department of State advised that it was taking six to eight weeks to clear persons entering the United States under those conditions.

Two months from now the Yugoslav government may produce the evidence, and in another three to five months perhaps the petitioner can get his witnesses here. Your Honor, is it fair, is it just under our American principles of justice, to keep a man in detention that length of time when there is at present not even an iota of evidence against him? [84]

Thank you, your Honor.

The Court: Have you given any consideration to whether or not the complaint here states an offense under the laws of the United States?

Mr. Reynolds: Yes, I have, your Honor.

The Court: Murdered or caused to be murdered?

Mr. Reynolds: I am not a criminal lawyer in the state of California, your Honor, and the laws of the state of California are those under which the evidence of criminality must be brought. It must support an indictment, as I understand it, under the laws of the state of California and I do not know, from this bare statement in the complaint——

The Court: No, I think that this in the Federal Court here would be—I was under the impression it would be whether nor not it would state an offense under the laws of the United States rather than of the laws of the state of California.

Mr. Reynolds: Under the precedents in this case which counsel has already researched, I did not come here prepared to state those to you this morning. It seems perfectly clear that the offense must constitute an offense in the state of the United

States where the man is.

Mr. Walker: That is my understanding, your Honor.

The Court: The question then would be whether or not it states an offense under the state law of California. [85]

Mr. Reynolds: Yes, sir.

Your Honor, that is all I care to state at the moment.

The Court: Mr. Artukovic, come forward and be sworn.

Mr. Walker: Your Honor, I think if the accused is going to testify we should seriously consider the matter of an interpreter.

The Court: That is up to him.

ANDRIJA ARTUKOVIC

called as a witness by the court, having been first duly sworn, was examined and testified as follows:

The Court: Be seated.

Do you wish to interrogate the witness, counsel? You know more about what you should or should not bring out, or rather what you should not bring out in this hearing, than I do. I may ask some questions which would embarrass him if he answers them and I may ask some questions which may prejudice his rights if he answers them.

Mr. Reynolds: Your Honor, I don't know for certain from the statements that have been made exactly which question he has been asked. I do recollect definitely that this counsel made statements regarding his movements from the date he

(Testimony of Andrija Artukovic.)

left Croatia and I would be pleased to freshen him in that regard.

The Court: Well, in the matter of fixing bail, considerations are given to a man's age, his occupation, his family, his ties, the things that would tend to keep him here, his [86] employment, who his employer is, how much money he earns, and similar matters.

If you do not wish to interrogate him, I know what I want to find out about him but, as I say, you may have some ideas on the matter. In other words, I do not want to prejudice his rights by putting him in the position where he might be embarrassed to answer the question or to decline to answer it.

Mr. Reynolds: I am certain the petitioner would not be embarrassed.

The Court: Very well.

What is your name?

The Witness: Andrija Artukovic.

The Court: How old are you?

The Witness: 51.

The Court: Where were you born?

The Witness: In Klobuk, Croatia.

The Court: That was in 1900?

The Witness: That was in Austria-Hungary.

The Court: Were you born a subject of Austria-Hungary or the Kingdom of Servia?

The Witness: Austria-Hungary.

The Court: You were an Austro-Hungarian?

The Witness: Yes.

(Testimony of Andrija Artukovic.)

The Court: Did you ever become a citizen of what was [87] then the Kingdom of Servia?

The Witness: No, never in my life.

The Court: The Kingdom of Servia is or was then that country or a portion of it which is now known as Yugoslavia?

The Witness: Only a portion of today's Yugoslavia, your Honor.

The Court: Only a portion was then the Kingdom of Servia?

The Witness: Yes.

The Court: The Kingdom of Servia was immediately adjacent to Austria-Hungary, to the south, is that correct?

The Witness: Some part of Austria-Hungary. There was formed after the first World War a new state of Croats, Servians and Slavonians.

The Court: That is after the first World War?

The Witness: Yes.

The Court: Before the first World War and at the time of your birth your parents were Austro-Hungarian?

The Witness: Austro-Hungarian, your Honor.

The Court: And did you reside in Austria-Hungary until when?

The Witness: Until the first World War, your Honor.

The Court: Until the first World War?

The Witness: Until the first World War.

The Court: You were too young to serve or did

(Testimony of Andrija Artukovic.)

you serve [88] in any of the armies engaged in the first World War?

The Witness: I was only taken in the military in the first World War but I was not in the front.

The Court: In what army were you taken?

The Witness: Infantry.

The Court: Of what country, Austria-Hungary?

The Witness: Austria-Hungary.

The Court: Which was then an ally of Germany?

The Witness: Yes, your Honor.

The Court: And how long were you in the army?

The Witness: Six months.

The Court: Then did you leave Austria-Hungary?

The Witness: No, Austria-Hungary was destroyed after the first World War.

The Court: And you remained living there?

The Witness: I remained in Croatia.

The Court: You lived in the village where you were born?

The Witness: No, I was studying.

The Court: Studying in Croatia?

The Witness: Yes.

The Court: And that was the Croatia that became part of whatever the organization of states in the Balkans was called after the first World War?

The Witness: After the first World War, it constitute a new state, the state of Servians, Croats and Slavonians [89] until 1931.

(Testimony of Andrija Artukovic.)

The Court: Until when?

The Witness: '31.

The Court: Until 1931?

The Witness: Yes.

The Court: And in 1931 it was again recognized as a monarchy?

The Witness: No, in '31 it was proclaimed Yugoslavia, who never before in history existed.

The Court: That was King Peter?

The Witness: No, King Alexander.

The Court: Later there was a country known as the Kingdom of Yugoslavia?

The Witness: That was formed in '31.

The Court: Did that take in the area where you lived? What I am trying to get at is how you ever became a citizen of Servia, Croatia or any part of the land or country or territory which is now included as part of Yugoslavia. Do you understand my question?

The Witness: Yes, your Honor.

I was in Croatia, never from Servia.

The Court: In Croatia when you were born that was part of Austria-Hungary?

A. Yes, and later one part, Croatia, the new state was created, the state of Croats, Servians and Slavonians, one [90] state.

The Court: Yes. And that took in the portion of Austria or the portion where you lived which had previously been Austria?

The Witness: Yes, your Honor.

The Court: So that you then became a subject

(Testimony of Andrija Artukovic.)

and citizen of the Croats, Slavonians and Servians?

The Witness: Exactly, your Honor.

The Court: And that was absorbed then into the Kingdom, the so-called Kingdom of Yugoslavia in 1931?

The Witness: Yes, your Honor.

The Court: The union of Croatia, Slavonia and Dalmatia, and all of those countries was proclaimed in 1913, is that right, or after the first World War?

The Witness: After the first World War.

The Court: Did you always maintain your residence in Croatia?

The Witness: Yese, your Honor; always.

The Court: You are a Croatian?

The Witness: Always a Croatian and only a Croatian, your Honor.

The Court: Did you ever embrace the government of Yugoslavia as a subject, that is, by voluntary act?

The Witness: No, your Honor. Yugoslavia, this artificial state Yugoslavia, never was recognized by the Croatian [91] people—never, never.

The Court: Well, in 1941 Germany invaded Croatia?

The Witness: Yes, your Honor.

The Court: That is to say, the Kingdom of Yugoslavia as it was then known, Croatia being a part of it, was invaded by Germany?

The Witness: Yes, sir.

The Court: On April 6, 1941?

The Witness: Yes, your Honor.

(Testimony of Andrija Artukovic.)

The Court: And did you engage in any of the activities of either or any army?

The Witness: Yes, your Honor.

The Court: What army?

The Witness: Not army, only politically.

The Court: Not military?

The Witness: Only politically, not military.

The Court: According to the World Almanac, of which the court can take judicial notice, the Yugoslavian army, that is to say, of the Kingdom of Yugoslavia, capitulated in two weeks.

The Witness: Before. In 24 hours, your Honor.

The Court: In 24 hours?

The Witness: Twenty-four hours, your Honor.

The Court: So that the country was then under——

The Witness: Under occupation of Germany, German occupation. [92] Only the Croats, they proclaimed an independent state of Croatia.

The Court: The Croats did?

The Witness: The Croats.

The Court: That is after Germany came in?

The Witness: No, before Germany came in.

The Court: Before?

The Witness: Yes.

The Court: And Croatia then was conquered likewise?

The Witness: No, Croatia became an independent state.

The Court: You mean Germany recognized it as an independent state?

(Testimony of Andrija Artukovic.)

The Witness: Germany, Japan, Finland, Sweden, Bulgaria, Hungary, Rumania—all recognized Croatia as a state, with diplomatic representatives like today.

The Court: That is to say, that was in 1941?

The Witness: Yes, your Honor.

The Court: It was recognized as a separate and independent nation?

The Witness: Independent nation.

The Court: And were you a part of the government of that nation?

The Witness: Yes, your Honor, I was.

The Court: What was your capacity?

The Witness: I was Minister of Interior, Minister of [93] Justice and President of the State Council, your Honor.

The Court: Minister of the Interior, does that job have the same powers and duties as some of the countries behind the so-called Iron Curtain? In other words, that the Minister of the Interior is the chief of police?

The Witness: No, never, your Honor.

The Court: You were the Minister of the Interior and the Minister of Justice?

The Witness: Minister of Justice and President of the State Council.

The Court: And President of the State Council?

The Witness: Yes, your Honor.

Mr. Reynolds: Your Honor, he held those positions separately. Maybe you may have misunderstood that he held all those portfolios together. He

(Testimony of Andrija Artukovic.)

was first one, then changed to another, and then another.

The Court: What was your first?

The Witness: Minister of the Interior.

The Court: Minister of the Interior?

The Witness: Yes.

The Court: And first of all, was the Croatian —what was it, a republic.

The Witness: A republic, your Honor.

The Court: It was a Croatian republic?

The Witness: Yes, your Honor. [94]

The Court: Did it have a constitution, a written constitution?

The Witness: We tried to make a constitution but during the time we became seriously involved and it became impossible to organize it like we wanted to organize it.

The Court: You were first minister of the Interior?

The Witness: Yes.

The Court: And as Minister of the Interior did you or did you not have charge of the police of the state?

The Witness: No, your Honor.

The Court: Or the army?

The Witness: No.

The Court: Then what position did you next assume?

The Witness: Minister of Justice.

The Court: How long were you Minister of the Interior?

(Testimony of Andrija Artukovic.)

The Witness: One year.

The Court: Then how long were you Minister of Justice?

The Witness: Six months, it seems to me.

The Court: Then you——

The Witness: Then again three or four or five months Minister of the Interior, then President of the State Council.

The Court: Now the Minister of Justice, as Minister of Justice did you have charge of the state police?

The Witness: No, your Honor. [95]

The Court: Now when was the Croatian Republic established, what date?

The Witness: 10 April 1941.

The Court: The 10th of April 1941?

The Witness: Yes, your Honor.

The Court: That was four days after the Germans invaded?

The Witness: Yes. But the Germans invaded from the sea, from Bulgaria, not Croatia—Croatia is on the west—so on the west is Servia and from the east, from Bulgaria, the Germans invaded.

The Court: Then the Germans had not exactly invaded Croatia?

The Witness: No.

The Court: They had invaded the country of which it was a part?

The Witness: Yes.

The Court: Four days after the invasion Croatia

(Testimony of Andrija Artukovic.)

severed itself from that country, cut itself off and created its own country?

The Witness: Yes, your Honor.

The Court: Had the government of Yugoslavia capitulated to the Germans then?

The Witness: They fled, to Cairo, London, like flies.

The Court: They fled?

The Witness: Like flies; yes, sir. [96]

The Court: Well, then, what was the status of Croatia in so far as war was concerned?

The Witness: The Croatian nation, your Honor, exists for 1400 years. That is the most oldest nation in Europe, and before 1400 years we had our own state. During our national state life never in our history was the Croatian nation so bloodily oppressed as from my accusers now today. During the second World War all our forces were there to save the Croatian nation, to save our independence. All our forces, moral forces economic forces and military forces in this direction was not spared, and we saved it. But in Yalta it was taken away.

The Court: You say that you severed yourself from Yugoslavia and established the Croatian Republic?

The Witness: Yes, your Honor.

The Court: The Croatian Republic was recognized by treaties?

The Witness: Yes, your Honor, only one part. From the western democracies she was not recognized. It was supposed to be because the second

(Testimony of Andrija Artukovic.)

World War produced in 1939, with the invasion of Germany, the German invasion of Poland.

The Court: You were recognized by Germany?

The Witness: By Germany, by Italy, by Hungary, by Rumania, by Bulgaria, by Japan, by Sweden and the Holy City.

The Court: By the Papal See? [97]

The Witness: Yes.

The Court: The Vatican?

The Witness: The Vatican.

The Court: Were you recognized also by the Soviets, Russia?

The Witness: No, no, sir.

The Court: Were you recognized by Poland?

The Witness: No, no, your Honor. Poland was destroyed.

The Court: Poland had nothing left to recognize anybody with?

The Witness: Poland was just destroyed.

The Court: Now did you, as an officer of the Croatian Republic, participate in the raising of an army to join on the side of the Germans or Allies or the Russians, or did you participate with an army at all?

The Witness: Your Honor, Croatian military forces fought only in Croatian territory. No one soldier, Croatian soldier, was in Servia. No one Croatian soldier was in Slavonia. No one Croatian soldier was in Hungary. No one Croatian soldier was in Bulgaria or Rumania or Italy or Austria—only against Russian Communists.

(Testimony of Andrija Artukovic.)

The Court: What was the general area of the Croatian Republic in square miles?

The Witness: 115,000 square miles.

The Court: And the population? [98]

The Witness: Population of 6,0000,000, about six or seven million, your Honor.

The Court: During that period of time you occupied these various positions until when?

The Witness: Until '45, your Honor.

The Court: Until 1945?

The Witness: Yes.

The Court: What happened then?

The Witness: In 1945 we are encircled from all sides and the Russian troops came, with tanks, and there was only one small exit that could save us, only some few thousand. Otherwise about 300,000, your Honor, that the world opinion could hear, was extradited to the Tito government and all 300,000 was murdered, just massacred, murdered Croatian people.

The Court: You mean after 1945?

The Witness: After 1945, during the second World War, these accusers, my accusers, assassinated and murdered many more, between 300,000 or 400,000 innocent people, like Jesus Christ, innocent people, and they accuse me now.

The Court: After 1945 what happened to the Croatian Republic?

The Witness: We are occupied by Russia.

The Court: You were occupied by Russia?

The Witness: Russia and Bulgarian troops. [99]

(Testimony of Andrija Artukovic.)

The Court: Did that portion of the country ever become a part of what is now known as Yugoslavia?

The Witness: Now it is Yugoslavia.

The Court: How did that come about?

The Witness: By force.

The Court: By force?

The Witness: By force.

The Court: That is to say, how long did it take for Russia to control Croatia?

The Witness: Russian troops together with Bulgarian troops, your Honor.

The Court: All of those under Russian domination?

The Witness: Yes, all countries.

The Court: How long did they occupy Croatia?

The Witness: Maybe six months.

The Court: What happened then?

The Witness: Later Tito formed a new government and now it is a Communist government.

The Court: Later Tito did what, he came in and took over from the Russians?

The Witness: He was together with Stalin, like today only he needs American dollars. That is the main reason. Tito tomorrow goes together with Stalin, only he needs American dollars. That is what Tito is doing.

The Court: What I am trying to do is get the history of [100] this. Russia occupied Croatia about six months?

The Witness: Yes, sir.

The Court: Then in liaison with Tito?

(Testimony of Andrija Artukovic.)

The Witness: Liaison with Tito and together.

The Court: And they threw it into what you call Yugoslavia?

The Witness: Communist Yugoslav government.

The Court: A Communist Yugoslav government?

The Witness: Yes.

The Court: And it since has been that, is that correct?

The Witness: Yes, your Honor.

The Court: Now when did you leave Croatia?

The Witness: I left in May '45 and fled to Austria, your Honor.

The Court: In May 1945?

The Witness: Yes, your Honor.

The Court: That was, you together with the rest of the Croatian government?

The Witness: Yes, your Honor.

The Court: That was after VE-Day? What was VE-Day?

The Witness: The 8th of May.

The Court: It was just before the 8th of May, you left the 5th of May?

The Witness: No, no. I think the 9th or 10th.

The Court: The 9th or 10th? [101]

The Witness: Yes, your Honor.

The Court: And you fled to Austria-Hungary?

The Witness: Austria, your Honor.

The Court: To Austria?

The Witness: Yes.

The Court: Did you go with the remainder, with the men of the government?

(Testimony of Andrija Artukovic.)

The Witness: Yes, your Honor, partially.

The Court: Partially?

The Witness: Yes, sir.

The Court: Were you then married?

The Witness: I was married.

The Court: To your present wife?

The Witness: Yes, your Honor.

The Court: And did you then have any children?

The Witness: Two children.

The Court: They lived with you in Croatia?

The Witness: Yes.

The Court: What town?

The Witness: In Zagra.

The Court: What was your occupation as a civilian?

The Witness: I was before a lawyer.

The Court: You were a lawyer?

The Witness: Yes, your Honor.

The Court: Over in that country you were referred to as [102] doctors?

The Witness: Yes, your Honor.

The Court: And you practiced your profession, did you?

The Witness: Yes, your Honor.

The Court: And engaged in political and governmental activities?

The Witness: Yes, your Honor.

The Court: How long were you in Austria?

The Witness: In Austria I was until November '46.

The Court: November 1946?

(Testimony of Andrija Artukovic.)

The Witness: Yes.

The Court: Did you have any passports—where are those?

Maybe you can take him through this period, counsel, if you are familiar with it. It will probably save some time.

Mr. Reynolds: All right, your Honor. I will be very pleased to.

Direct Examination

Q. (By Mr. Reynolds): Mr. Artukovic, I hand you a document and ask you to identify it to this court.

A. Your Honor, I had my diplomatic passport and be cause Croatia collapsed I got this copy.

The Court: Do you wish to see this, Mr. Walker?

Mr. Walker: Yes, your Honor. [103]

(The document referred to was passed to counsel.)

The Court: This is the translation below?

The Witness: Yes.

The Court: What is that?

The Witness: The card of identity.

The Court: Now this was issued on the date it bears, September 13, 1945?

The Witness: Yes, your Honor.

The Court: By the then Yugoslav government?

The Witness: No, Austria.

The Court: By the Austrian government?

The Witness: Yes.

The Court: Very well.

(Testimony of Andrija Artukovic.)

Mr. Reynolds: I would like to introduce this photostatic copy in lieu of the original.

The Court: It will be marked as Petitioner's Exhibit No. 3.

(The photostatic copy referred to was received in evidence and marked Petitioner's Exhibit No. 3.)

Mr. Reynolds: Now, your Honor, we have here a document which we do not have translated. It is a Croatian diplomatic passport, and I call your Honor's attention to the only English entry in the passport on the final page.

The Court: The final page, the English entry? It is "No Security Objection, CSM, No. 1 Det. 88 FSS, Tamsweg, [104] 1 Juni." What does that mean?

Mr. Reynolds: The English procedure is not to indicate the year if the year is already indicated on the page.

The Court: That is 1945?

The Witness: Yes, your Honor.

The Court: Where did you receive this document? Can you get this photostated and get a translation made?

Mr. Reynolds: Yes, I can.

The Court: Where did this document come from?

The Witness: From the Croatian government.

The Court: You mean you issued this to yourself?

The Witness: No, the State Department.

(Testimony of Andrija Artukovic.)

The Court: The State Department of Croatia?

The Witness: Yes, your Honor.

The Court: Austria then recognized Croatia?

The Witness: No, Austria was in Germany.

Mr. Reynolds: There was no Austria. It was part of Germany, your Honor.

The Court: How did you get the Austrian passport in 1945?

Mr. Reynolds: Because this is after the Germans were defeated.

The Witness: After Germany collapsed.

The Court: I see.

Now the rubber stamps in the back, is this not Russian on the back page?

The Witness: No, Bulgarian.

The Court: That is Bulgarian?

The Witness: Yes, your Honor.

The Court: What does that say in English? Can you tell?

The Witness: That I was represented at the funeral of King Boris of Bulgaria, who died. That is only for tax.

The Court: In other words, you went to Bulgaria as a representative of your nation?

The Witness: Yes, I represented the Croatian nation at the funeral.

The Court: I notice some rubber stamps here with dates, 1-19-45. Will you translate those two upper ones? Translate them so the reporter can hear you.

(Testimony of Andrija Artukovic.)

The Witness: That is only stamped for the money, your Honor.

The Court: What does it say?

The Witness: It says, allowed to 5000 reichsmarks, money to bring with me.

The Court: What date does it say?

The Witness: 5 April 1945.

The Court: The 5th of April 1945?

The Witness: Yes.

The Court: Who stamped the original, what government? Does it say? [106]

The Witness: That is Croatian government.

The Court: The top one there?

The Witness: That is Croatian government. Both of them.

The Court: Both by the Croatian government?

The Witness: Yes, your Honor.

The Court: And they were put on there on or about the date they bear?

The Witness: Yes.

The Court: Can you translate it literally, the top one here?

The Witness: It is allowed to buy 5000 marks.

The Court: Go ahead. Finish one at a time.

The Witness: It is allowed to buy 5000 marks, 5 April 1945, Croatian Bank.

The Court: Where was that, in Croatia?

The Witness: In Croatia, your Honor.

The Court: That was just before the collapse?

The Witness: Just before the collapse; yes, sir.

The Court: What does the second say?

(Testimony of Andrija Artukovic.)

The Witness: There is sold—they give me 5000 marks, 5 April 1945, cash from the state bank.

The Court: Then that is all one transaction?

The Witness: Yes.

The Court: One is the permission to do it and the other [107] is the indication that it was done?

The Witness: Yes.

Mr. Reynolds: In this connection we might ask this witness whether Croatia printed its own money.

The Witness: Yes, sir.

Mr. Reynolds: In other words, your Honor, this man bought the reichsmarks with Croatian money.

The Court: This is also a passport for your wife?

The Witness: Yes, your Honor.

The Court: Now it shows some dates here in 1941 and in 1942.

The Witness: Yes, your Honor.

The Court: Can you translate this and have it by morning? I will not try to read that now.

Mr. Reynolds: I will try and do so.

The Court: That was the passport issued on what date to you by the Croatian government?

The Witness: 12 November '41.

The Court: Now you left on May 10th or something like that of 1945?

The Witness: Yes, your Honor.

The Court: And went into Austria?

The Witness: Yes, your Honor.

The Court: And obtained that passport, Exhibit 3, in Austria? [108]

(Testimony of Andrija Artukovic.)

The Witness: Yes, your Honor.

The Court: That card of identity?

The Witness: Yes, your Honor.

The Court: How long did you remain in Austria?

The Witness: Until November '46.

The Court: Until November 1946?

The Witness: Yes, your Honor.

The Court: Then where did you travel?

The Witness: Then I traveled into Switzerland.

The Court: By this card of identity, Exhibit 3?

The Witness: I had my diplomatic passport and this card of identity with me.

The Court: The two of them?

The Witness: Yes.

The Court: How did you travel, I mean, by train, plane, foot or by secret means?

The Witness: On foot.

The Court: On foot?

The Witness: Yes, your Honor.

The Court: Austria is adjacent to Switzerland?

The Witness: Yes, your Honor.

The Court: You went through the regular port of entry?

The Witness: No, your Honor.

The Court: Into Switzerland?

The Witness: Yes. [109]

The Court: You did not?

The Witness: No, I did not.

The Court: You did into Austria?

The Witness: From Austria to Switzerland.

(Testimony of Andrija Artukovic.)

The Court: You did from Austria to Switzerland?

The Witness: Yes, from Austria to Switzerland I did.

The Court: Is that entered in your passport?

Mr. Reynolds: I think there is a misunderstanding, your Honor.

The Court: You can ask him then.

Q. (By Mr. Reynolds): Mr. Artukovic, when you entered Switzerland did you enter under the name of Andrija Artukovic?

A. No; in the beginning, no.

Q. Under what name did you first make yourself known to the Swiss authorities?

A. Alois Anich.

Q. How do you spell that?

The Court: What name did you go under while you were in Austria?

The Witness: Under my real name, Andrija Artukovic.

The Court: What parts of Austria did you stay in?

The Witness: First in the English Zone of Occupation, then in American Occupation Zone.

The Court: During the entire period of more than a year? [110]

The Witness: Yes, your Honor.

The Court: How long were you in the English Occupation Zone?

The Witness: Two months; I was there two months.

(Testimony of Andrija Artukovic.)

The Court: Then you went into the American Occupation Zone on or about the date of that stamp?

The Witness: Yes, your Honor.

The Court: Is that right?

The Witness: Yes, your Honor.

The Court: Was that put on there when you went from the English into the American Occupation Zone?

The Witness: Yes, your Honor, exactly.

The Court: And you exhibited that passport to the American Occupation authorities at that time?

The Witness: Yes, your Honor.

The Court: And you also had with you this Exhibit 3, your card of identity?

The Witness: Yes, your Honor.

The Court: Very well. Go ahead, counsel.

Q. (By Mr. Reynolds): Mr. Artukovic, while you were in the Austrian zone carrying the certificate of identity which has been entered in the record, were you required to exhibit this certificate of identity to the American Occupation authorities?

A. By the police. [111]

Q. By the American police?

A. Austrian and American; American over what was with Austrian police.

Q. You mean that the American police and the Austrian police traveled together?

A. Together; yes.

Q. Were you required to exhibit this certificate on numerous occasions?

(Testimony of Andrija Artukovic.)

A. Please?

Q. Were you required to exhibit this certificate on a number of occasions? A. Yes, sir.

The Court: Lots of times?

The Witness: Hundreds of times.

Q. (By Mr. Reynolds): As the result of exhibiting this certificate, were you ever detained by the Austrian or American authorities?

A. Never, sir, never.

Q. Now you have testified that you entered Switzerland under the name of Alois Anich?

A. Yes, sir.

Q. What was your purpose in describing yourself as Alois Anich?

A. To protect me from such persons who accuse me, to protect my life and my children's life and my family's life [112] because hundreds and hundreds, the best, dearest friends, was assassinated, the most terrible methods from the Communists, that today are charging me with such.

Q. Were any of your friends or colleagues killed?

A. Dr. Sehula Srejevic, political leader from Montenegro, he was assassinated in English Occupation Zone in barracks, together with his wife.

Dr. Tvo Protelipac, my colleague from the university, he was assassinated during noon in Trieste from behind on the street. There are hundreds like that.

From these they now accuse me again of such murderous charges.

(Testimony of Andrija Artukovic.)

Q. Mr. Atukovic, when you entered Switzerland, to what city in Switzerland did you go?

A. In Fribourg, sir.

Q. Did you make your identity as Andrija Artukovic known to the authorities at Fribourg?

A. Yes, sir, from the first day as I was coming into Switzerland, Switzerland authorities unofficially know who I was.

The Court: Did you show them your passport?

The Witness: Later, yes, my diplomatic passport, your Honor, and all this passport.

The Court: You showed that to them?

The Witness: Yes, sir. [113]

The Court: Within a day?

The Witness: Please?

The Court: Within a day after you arrived?

The Witness: No, later; one or two months.

The Court: One or two months later?

The Witness: Yes.

The Court: Was your wife with you then?

The Witness: No.

The Court: Where was she?

The Witness: She was in Austria.

The Court: When did she leave Croatia to go to Austria?

The Witness: She leave two months or three months before me.

The Court: Before you?

The Witness: Yes.

The Court: With your two children?

The Witness: Yes, your Honor.

(Testimony of Andrija Artukovic.)

The Court: And were with you in the occupation zone?

The Witness: Yes, your Honor.

The Court: The English?

The Witness: She was in France. I didn't know at all whether my wife is living or not, what happened to my children. Later, after maybe four or five months I knew that my wife was living with the children in French Occupation Zone.

The Court: In the French Occupation Zone?

The Witness: Yes.

The Court: By that time you were living in the American Occupation Zone?

The Witness: Yes, your Honor.

The Court: Then when did you join your wife?

The Witness: Later when I came to French Zone.

The Court: And you stayed in the French Zone?

The Witness: Until my going to Switzerland.

The Court: Until you went to Switzerland?

The Witness: Yes.

The Court: You went to Switzerland directly from the French Zone?

The Witness: Yes.

The Court: Did she go to Switzerland with you?

The Witness: No, I alone, my wife stayed, she stayed in Austria.

The Court: In the French Zone?

The Witness: In the French Zone.

The Court: When did she leave the French Zone?

(Testimony of Andrija Artukovic.)

The Witness: She left maybe five or six months after me.

The Court: And you were in Switzerland all that time?

The Witness: Yes, your Honor.

The Court: How long were you in Switzerland all together?

The Witness: From November '46 until July '47, your [115] Honor.

The Court: November '46 until July 1947?

The Witness: Yes, your Honor.

The Court: And your wife had joined you in the meanwhile, is that right?

The Witness: Yes, your Honor.

The Court: Very well. You may proceed.

Mr. Reynolds: All right, your Honor.

I desire to present this document to the petitioner to have him identify it, your Honor.

Q. Will you tell the court, Mr. Artukovic, what that certificate is and what person is represented on that certificate?

The Court: Is that a photostatic copy or an original?

Mr. Reynolds: That is a photostatic copy, your Honor, and I will get to the reason the original is unavailable.

The Witness: This is a certificate of identity from the Swiss government.

The Court: To whom?

The Witness: To me.

The Court: What name?

(Testimony of Andrija Artukovic.)

The Witness: Alois Anich.

The Court: And what date is that?

The Witness: That is 4 March 1948.

The Court: The 4th of March 1948? [116]

The Witness: Yes, your Honor.

The Court: You had then left Switzerland?

The Witness: No, I left Switzerland, your Honor, 15 of July 1947—no, no. That is valid until 4 March '47.

The Court: The 4th of March 1947 is the date of issue?

The Witness: Yes, your Honor.

The Court: How long had you then been there?

The Witness: One year.

The Court: How long had you then been in Switzerland?

The Witness: Until July '47.

The Court: How long had you been there when that was issued?

The Witness: From March.

The Court: From November 1946?

The Witness: Yes, from November 1946.

The Court: Why was it not issued in your true name?

The Witness: For my security, for my personal security from prosecution. I showed to save my life or my family because the Communists persecuted me.

The Court: Did you display to the officials of the Swiss government your diplomatic passport at Croatia and your Austrian identity card?

(Testimony of Andrija Artukovic.)

The Witness: Yes, your Honor.

The Court: And they nevertheless issued to you the card of identification under the name of Alois Anich?[117]

The Witness: Yes.

The Court: Very well. You were going to ask him about the original.

Mr. Reynolds: Yes, I was going to bring that out, your Honor. I wanted to ask him a few preliminary questions.

Q. Did you make your application for that certificate of identity through the authorities of Fribourg? A. Yes.

Q. Was the request for the certificate of identity then referred to the Swiss federal government at Bern? A. Yes, sir.

Q. Were hearings held upon your application for that certificate of identity? A. Yes, sir.

Q. After the Swiss government at Bern know of your identity of Andrija Artukovic, did they permit your continued use of that certificate?

A. Yes, sir.

Q. For what purpose did you seek that certificate?

A. Only to save my life, life of my family, from the Communist persecution.

Q. Did you desire to use that certificate in lieu of a passport for purposes of travel?

A. Yes, sir, for the purpose of traveling too.

Q. To what country did you next go? [118]

A. To Ireland.

(Testimony of Andrija Artukovic.)

Q. Did you show to the Irish consul or the Irish Ambassador in Switzerland that certificate of identity? A. Yes, sir.

Q. What happened to the original certificate of identity? A. They expired.

Q. It expired? A. Yes.

Q. Where were you when it expired?

A. In Dublin, in Ireland.

Q. Did you then make application to the Dublin authorities for another certificate of identity?

A. Yes, sir.

Q. In the same name? A. Yes, sir.

Q. Were you required to give up the original certificate of that? A. Yes, sir.

The Court: Did you disclose to the Dublin authorities that your name was Andrija Artukovic?

The Witness: No.

The Court: You did not?

The Witness: I did not.

The Court: You remained living under the name of Anich? [119]

The Witness: Yes, sir.

The Court: Your wife went with you to Ireland?

The Witness: Yes, your Honor.

The Court: And your children?

The Witness: Yes, your Honor.

The Court: Very well. This will be No. 4 for identification.

The Clerk: Should that not be No. 5?

The Court: Yes, the other will be No. 5.

(Testimony of Andrija Artukovic.)

(The documents referred to were marked Petitioner's Exhibits Nos. 4 and 5 respectively for identification.)

The Court: You will get a photostatic copy and a translation of the passport as well?

Mr. Reynolds: Yes.

The Clerk: Shall I mark this that he is about to introduce as No. 6?

The Court: Yes, No. 6.

(The document referred to was marked Petitioner's Exhibit No. 6 for identification.)

Q. (By Mr. Reynolds): I show to the petitioner a certificate of identity issued by Ireland and ask him to identify the same.

The Court: Is that what that is?

The Witness: Yes.

The Court: That is the certificate that was issued to [120] you when you surrendered the Swiss certificate?

The Witness: Yes, your Honor.

The Court: This may be marked in evidence. Do you wish to withdraw it and substitute a photostat?

Mr. Reynolds: Yes. I will supply them to the court tomorrow.

The Court: You can have them photostated in the clerk's office for the regular charge, if you wish.

Mr. Reynolds: I would prefer to do that.

(Testimony of Andrija Artukovic.)

(The document referred to was received in evidence and marked Petitioner's Exhibit No. 6.)

The Court: Do you want to see this, Mr. Walker?

Mr. Walker: Yes, your Honor.

(The document referred to was passed to counsel.)

The Court: What occupation did you pursue when you were in the British Zone, the American Zone, the French Zone and in Switzerland?

The Witness: What occupation?

The Court: What did you do for a living? Did you work?

The Witness: We were in a camp.

The Court: You were in a concentration camp?

The Witness: No, detention camp for refugees.

The Court: You were in refugee camps?

The Witness: Yes, in refugee camps.

The Court: That is, during the time you were in the [121] English Zone and the American Zone?

The Witness: In the American Zone I was trying—I take all steps to find my family.

The Court: You were spending your time trying to find your family?

The Witness: Yes, your Honor.

The Court: And you did not have any occupation?

The Witness: No.

(Testimony of Andrija Artukovic.)

The Court: Did you live with friends or relatives?

The Witness: Some. It was a miserable life.

The Court: You lived with relatives?

The Witness: Yes.

The Court: Then when you went to the French Zone, did you have an occupation?

The Witness: In French Zone I haven't. It was too hard to find occupation.

The Court: You didn't stay there very long?

The Witness: No.

The Court: What did you do in Switzerland?

The Witness: In Switzerland I write, I begin to write a book.

The Court: Is that the way you made your living?

The Witness: My brother support me.

The Court: Your brother?

The Witness: Yes. [122]

The Court: Was here there with you?

The Witness: No, he is in America.

The Court: He sent money to you in Switzerland?

The Witness: Yes.

The Court: Then you went to Ireland, what did you do?

The Witness: The same. My brother and sister-in-law, they support me all the times until I come here.

The Court: How long were you in Ireland?

The Witness: One year.

(Testimony of Andrija Artukovic.)

Q. (By Mr. Reynolds): Mr. Artukovic, during the time you lived in Ireland, were you always known as Alois Anich?

A. Yes, sir.

Q. Did you have any children born to you and your wife in Ireland? A. Yes, my son.

Q. Under what name was he born?

A. Under the name Anich.

Q. From Ireland, to what country did you go, Mr. Artukovic?

A. I came to United States of America.

Q. And in order to come to the United States it was necessary that you obtain a visa?

A. Yes. [123]

Q. From the American Consul?

A. Yes, I came, I was a temporary visitor here.

Q. Did you present to the American consular office your Irish certificate of identity?

A. Yes, sir.

Q. Did he request any further background as to you? Did he request birth certificates?

A. No, sir.

Q. Did he request any marriage records between you and your wife? A. No.

Q. In other words, you did not by any voluntary act deceive the American Consulate?

A. Never, never.

Q. When you came to the United States, was it your purpose to remain here?

A. No, I came only as a temporary visitor and later on, when I saw that I could make my living

(Testimony of Andrija Artukovic.)

here and this law, displaced persons law, came then I decided to stay here.

Q. You entered the United States under the name of Alois Anich? A. Yes, sir.

Q. How soon after you entered the United States under the name Alois Anich did you make known to the American Government authorities your name of Andrija Artukovic? [124]

A. Yes. sir.

Q. How soon afterwards?

A. After, it seems to me, after the first promulgation.

The Court: When did you enter the United States?

The Witness: In New York.

The Court: When?

The Witness: 16 July, your Honor.

The Court: 16th of July what year?

The Witness: '48.

The Court: That is, you, your wife and your three children?

The Witness: Three children, your Honor.

The Court: Very well.

Q. (By Mr. Reynolds): Did you make more than one application for extension of your visitor's permit in the United States?

A. Yes, sir, four times, it seems to me, four or five.

The Court: When did you make known to the —you said the American Government?

Mr. Reynolds: Yes, your Honor.

(Testimony of Andrija Artukovic.)

The Court: ——that you were Andrija Artukovic?

The Witness: I make it, it seems to me, by my second application when I decided to stay here.

The Court: Your first application was good for six months, is that right? [125]

The Witness: No, three months.

The Court: So you applied for renewal and at that time you disclosed your true identity?

The Witness: Yes, your Honor.

The Court: To the——

The Witness: American authorities.

The Court: ——to the American authorities?

The Witness: Yes, your Honor.

Mr. Reynolds: Your Honor, we have filed with the Immigration and Naturalization Service the form I-539, or our copy thereof, which is an application to extend time of temporary stay. We filed with the Service that application for this petitioner which shows clearly that he made himself known by that name.

The Court: Do you have a copy there?

Mr. Reynolds: Not of that, but of his wife's which was filed in exactly the same way at the same time, and showed the same name and shows the date on the back.

The Court: Let us have him testify to that.

The Clerk: No. 7.

(The document referred to was marked Petitioner's Exhibit No. 7 for identification.)

(Testimony of Andrija Artukovic.)

The Court: I suppose you could secure the original. No doubt the United States Attorney will secure it promptly.

Mr. Danielson: I would be glad to request it, your [126] Honor.

Q. (By Mr. Reynolds): Mr. Artukovic, I show you that application for extension of temporary stay made by your wife in January 1949 and ask you whether you made a similar application at the same time.

A. Yes, sir, the same day.

The Court: I think, Mr. Danielson, if you could get each one of his applications that it might be useful, or photostats of them.

Mr. Danielson: I will see if I can get hold of photostats of all the exhibits that have been filed.

The Court: Very well.

What is your testimony, that you made out one identical to this except your name instead of hers?

The Witness: (Pause.)

Q. (By Mr. Reynolds): You testified that you made out a similar application in your name?

A. Yes.

Q. Instead of hers?

A. Yes, the same day.

The Court: The 25th of January 1949? There must have been a previous one.

Mr. Reynolds: Yes, there was, your Honor. There were [127] several previous and I do not have copies of the others. There is one previous and one subsequent.

(Testimony of Andrija Artukovic.)

The Court: On the one previous, on this one, it says your wife's name is Anna Maria Artukovic, known as Anich.

The Witness: Yes, your Honor.

The Court: And if I understand your testimony correctly, on or about September or October 1948 you made an application on identical form wherein you stated your name, you stated your true name to be Artukovic, also known as Anich?

The Witness: Yes, sir.

The Court: Just the same as that?

The Witness: Same thing.

Mr. Reynolds: Your Honor, I am not certain that the witness understands that fully, because I am not certain, and I don't believe he is certain, that the first application of which he kept no copy was made in both names.

The Witness: No, the second.

The Court: The second one?

The Witness: Yes.

The Court: He came in here first on July 16, 1948 under the name of Anich, then in three months you applied for a new one under the name Artukovic?

The Witness: No, the second application, second extension.

The Court: The second extension? [128]

The Witness: Yes.

The Court: That would have been this one then?

The Witness: Yes.

The Court: In January 1949?

(Testimony of Andrija Artukovic.)

The Witness: Yes, exactly.

The Court: And this was the first time that you then disclosed——

The Witness: To American authorities.

The Court: ——to the American authorities that your true name was Andrija Artukovic?

The Witness: Yes, sir.

Q. (By Mr. Reynolds): Was that application in the name of Andrija Artukovic approved by the United States authorities? A. Yes.

Q. Were you granted an extension of your temporary stay? A. Yes, sir.

Q. Did you then file a later application in the name of Andrija Artukovic? A. Yes, always.

Q. Did you also file an application for displaced persons status known as Form I-500?

A. Yes, sir.

Q. In the name of Andrija Artukovic? [129]

A. Yes, sir.

Q. Do you remember approximately when you filed the first of such applications?

A. In 1950, it seems to me, or '49. I don't know exactly.

Q. Did you file more than one such application? A. More applications.

Mr. Reynolds: Your Honor, I would request that you ask the United States Attorney to obtain for this record both of his applications for displaced persons status, the one which was made in approximately February of '49 and another in late '50.

The Court: Very well. Or copies.

(Testimony of Andrija Artukovic.)

Mr. Walker: Why not get the entire file, your Honor?

Mr. Reynolds: That is entirely satisfactory to me, your Honor.

The Court: What you are interested in is in the applications.

Mr. Reynolds: Yes, your Honor. All I am trying to show is that this man acted in good faith.

The Court: The applications for temporary stay and the applications for displaced persons, all of them?

Mr. Reynolds: Yes, your Honor.

The Court: Very well. Will you do that, Mr. Danielson?

Mr. Danielson: I will be glad to cooperate too, as an [130] officer of this court, in any way I can, but are we not losing sight of the fact that this is an action against the United States Marshal, Mr. Boyle, who doesn't have possession of these documents?

The Court: I understand.

Mr. Danielson: I will be glad to cooperate, but it is possible that the petitioner could obtain some of these documents himself as photostats.

The Court: The only way he can obtain them is to demand them. If this is a civil proceeding he can demand inspection of the documents.

Now on trial, and that is a writ of habeas corpus, he is entitled to demand them and the Government has them.

(Testimony of Andrija Artukovic.)

Mr. Danielson: Mr. Boyle, the marshal, does not have them.

The Court: But it is the United States of America. He is an officer of the United States.

Mr. Danielson: I will be glad to see what I can do to get them.

The Court: Very well.

Q. (By Mr. Reynolds): Mr. Artukovic, have you been employed since you have been in the United States?

A. Not in the beginning.

Q. When did you first take employment? [131]

A. *Right* months ago in an office with my brother, by my brother, November 1950.

Q. Have you been employed steadily since your first occupation in the United States?

A. Yes, sir.

Q. What is your occupation?

A. I am counsel to my brother as bookkeeper, and I am also at the disposal of my brother.

The Court: Is that John Artukovic?

The Witness: Yes, your Honor.

The Court: You have three brothers, is that right?

The Witness: Only one brother. Two others are relatives.

The Court: John Artukovic is your brother?

The Witness: Yes, your Honor.

The Court: And Mr. and Mrs. Vido Artukovic are——

The Witness: My relatives.

(Testimony of Andrija Artukovic.)

The Court: ——cousins?

The Witness: Cousins, your Honor.

The Court: And Mr. and Mrs. Jerry Artukovic?

The Witness: My cousins.

The Court: What is your brother's business?

The Witness: General contractor.

The Court: General contractor?

The Witness: Yes. [132]

The Court: Does he build houses or dig trenches?

The Witness: Trenches, sewers, bridges.

The Court: Trenches, sewers, bridges and the like?

The Witness: Yes, sir.

The Court: And you are his bookkeeper?

The Witness: Partially.

The Court: How long has he been in the United States?

The Witness: About 20 years.

The Court: Has he resided during that period here in Southern California?

The Witness: Yes, your Honor.

The Court: And is he engaged on his own account?

The Witness: Yes.

The Court: What is the name of his company?

The Witness: P. and J. Artukovic.

The Court: Contractors?

The Witness: Yes.

The Court: And they live at Surfside Colony?

The Witness: (Pause.)

The Court: Where do they live?

(Testimony of Andrija Artukovic.)

The Witness: No, my brother lives in Sherman Oaks.

The Court: He lives in Sherman Oaks?

The Witness: Yes.

The Court: Where have you lived?

The Witness: In the house of my brother. [133]

The Court: In your brother's house?

The Witness: Yes.

The Court: Since you came here?

The Witness: Since I came here.

The Court: And you came here—I have forgotten the date you came to Los Angeles.

The Witness: 16 July 1948, your Honor.

The Court: You came directly to Los Angeles?

The Witness: Directly to Los Angeles.

The Court: From New York?

The Witness: Yes, your Honor.

The Court: And you have lived in his house?

The Witness: In his house steadily.

The Court: That is his home or house owned by him?

The Witness: He has two, four or five houses and he gave this to me.

The Court: Is it a flat building?

The Witness: One story.

The Court: And you have lived there with your wife?

The Witness: With my children.

The Court: Your wife and children?

The Witness: My wife and children.

The Court: Are you known generally in the

(Testimony of Andrija Artukovic.)

neighborhood as Artukovic?

The Witness: Absolutely. [134]

The Court: Or Anich?

The Witness: As Artukovic, your Honor.

The Court: Since your arrival here on July 16, 1948, although you did not disclose your true identity to the State Department until January the next year, do I understand that you have let yourself be publicly known—where did you live, Long Beach or Sherman Oaks?

The Witness: Surfside Colony.

The Court: That you let yourself be known and your family be known as Artukovic, is that right?

The Witness: From the beginning, no, but later.

The Court: How much later?

The Witness: Maybe around after one month.

The Court: After one month?

The Witness: One month or two months.

The Court: Then you were known as John Atukovic's brother?

The Witness: Yes, your Honor.

The Court: I see. Has your wife been employed since you have been here?

The Witness: No, your Honor.

The Court: You say you have a fourth child now?

The Witness: Yes, sir.

The Court: And that was born when?

The Witness: Two in Croatia, one in Ireland and one here [135] nine months ago.

(Testimony of Andrija Artukovic.)

The Court: What is the name of the child that was born here?

The Witness: Radoslau.

The Court: A girl baby?

The Witness: Yes, your Honor.

Q. (By Mr. Reynolds): Mr. Artukovic, just to clear the record, was your last child born in December of 1950?

A. Yes, on December 10, 1950 here in Surfside Colony.

The Court: Do you still live at Surfside Colony?

The Witness: Yes, your Honor.

The Court: In the same house?

The Witness: In the same house from the beginning.

The Court: Do you trade there? Have you and your family traded at the local stores?

The Witness: No.

The Court: I mean, did you buy groceries around there?

The Witness: Yes, your Honor.

The Court: Did you join in any church activities of any kind?

The Witness: Yes, for defense if necessary.

The Court: Did you join in any activities such as churches or clubs or a lodge or anything?

The Witness: Yes, your Honor. I go to Catholic Church. [136]

The Court: You are a Catholic by faith?

The Witness: Yes, your Honor.

(Testimony of Andrija Artukovic.)

The Court: You joined the Catholic Church in your community?

The Witness: Yes, your Honor.

The Court: At Surfside Colony?

The Witness: Yes, your Honor.

The Court: And your family——

The Witness: Not Surfside, but Seal Beach.

The Court: And your family?

The Witness: Yes, your Honor.

The Court: And you all attended the church?

The Witness: Yes, your Honor.

The Court: How are you known to the church, as Artukovic or Anich?

The Witness: Artukovic.

The Court: Artukovic?

The Witness: Yes, your Honor.

The Court: Do any of your children go to school?

The Witness: Yes, your Honor.

The Court: How many?

The Witness: Two.

The Court: Two girls?

The Witness: Yes.

The Court: Have they been going to school since you [137] have been there?

The Witness: Yes, your Honor, in Westminster Catholic School, both of the girls.

The Court: What names are they known by?

The Witness: Artukovic.

The Court: They were never enrolled there under the name of Anich?

The Witness: No.

(Testimony of Andrija Artukovic.)

The Court: What is your native language?

The Witness: The Croatian language.

The Court: The Croatian language?

The Witness: Yes.

The Court: That is different from the Serbian?

The Witness: Yes, your Honor.

The Court: And the Slovenian language is different? The Witness: It is different.

The Court: The name Anich, does it mean the same as Artukovic in one language or the other?

The Witness: Anich, that is one name, a Croatian name.

The Court: Anich is a Croatian name?

The Witness: Yes.

The Court: I mean it is not like Johan Verdi, which is John Green, it is not the same thing?

The Witness: No.

The Court: Proceed, counsel. [138]

Q. (By Mr. Reynolds): Mr. Artukovic, you have testified that you have been employed by P & J. Artukovic since approximately November of 1950? A. Yes, sir.

Q. What has been your earnings weekly on an average?

A. A hundred dollars, approximately.

The Court: A hundred dollars?

The Witness: A hundred dollars average.

Q. (By Mr. Reynolds): Have you supported your wife and children out of those earnings?

A. Always.

(Testimony of Andrija Artukovic.)

The Court: Do you have a social security number?

The Witness: Yes, your Honor.

The Court: A social security card?

The Witness: Yes, sir.

The Court: Have you it with you?

The Witness: My wife has.

The Court: How old is your brother John Artukovic?

The Witness: He is here.

The Court: How old is he?

The Witness: Forty-five.

The Court: You are the older?

The Witness: Yes, your Honor. [139]

The Court: Do you have any other brothers?

The Witness: One in Croatia.

The Court: He is still there?

The Witness: Still there.

(A document was passed to the court.)

The Court: This is your social security card?

The Witness: Yes, your Honor.

The Court: Showing social security No. 547-44-3340. It has been established for Andrew M. Artukovic, which is the anglicized version of your name?

The Witness: Yes, your Honor.

The Court: For social security purposes. It does not bear any date. Do you recall when that was issued to you?

The Witness: In November, your Honor, '50.

The Court: November 1950?

The Witness: Yes.

(Testimony of Andrija Artukovic.)

The Court: Very well.

Mr. Reynolds: Your Honor, may that be returned to him?

The Court: I think that can be returned to him. It might be withdrawn but it was read into the record as Exhibit No. 8.

(The social security card referred to was received in evidence and marked Petitioner's Exhibit No. 8, and withdrawn.)

Q. (By Mr. Reynolds): I hand petitioner a copy of the Irish birth certificate of his son, Radoslau, and ask that a copy thereof be received in evidence in these proceedings.

The Court: It may be admitted.

The Clerk: No. 9.

(The document referred to was received in evidence and marked Petitioner's Exhibit No. 9.)

Mr. Reynolds: I believe it is sufficiently explanatory and I don't believe it needs a translation.

The Court: Some of it is. I guess it is written in several languages.

Mr. Reynolds: Yes, your Honor. It is written in Gaelic and in English.

The Court: Very well. It will be received.

Q. (By Mr. Reynolds): Now, Mr. Artukovic, your son Radoslau was born in Dublin, Ireland?

A. Yes.

Q. Where was he baptized?

(Testimony of Andrija Artukovic.)

A. Here in Seal Beach.

Q. At Seal Beach in the Catholic Church?

A. Yes.

Q. Approximately when did that baptism occur?

A. Maybe after 10, 15 days in the beginning of August of '48.

Q. In the beginning of August 1948? [141]

A. Yes.

Q. Under what name was he baptized?

A. Artukovic.

Q. Mr. Artukovic, do you know that a private bill was introduced into Congress in 1949 in your behalf? A. Yes, I know.

Q. Do you know that that bill was introduced in the name Andrija Artukovic? A. Yes, sir.

The Court: What year?

Mr. Reynolds: 1949, your Honor.

The Court: What month?

Mr. Reynolds: I am sorry, your Honor, I do not have it immediately available.

The Court: Who introduced it?

Mr. Reynolds: Congressman King.

The Court: Cecil King?

Mr. Reynolds: Yes, your Honor.

We can certainly obtain a copy of that bill and present it in evidence in these proceedings as further showing that this man has made himself revealed as long ago as that date as Andrija Artukovic.

The Court: Very well.

Mr. Reynolds: Now, your Honor, I don't believe

(Testimony of Andrija Artukovic.)

I have any further questions to ask this man. [142]

The Court: I do not have any either.

Do you have any questions, Mr. Walker?

Mr. Walker: No questions.

The Court: Mr. Danielson?

Mr. Danielson: We have none, your Honor.

The Court: Very well. You may step down.

The Witness: Could I only, your Honor, only say one sentence?

The Court: Yes. Say it so the reporter can hear you.

The Witness: Your Honor, before Almighty God, Our Lord, before you, your Honor, before all American people, before all this audience, I tell you that today I am absolutely innocent. Not one charge is correct. All is produced by godless and atheist Communists, who make such lies, such false and ugly lies that could be produced only by these godless Communists.

I have never been, your Honor, in these places in my life. I never heard, your Honor, about these persons. I never heard, saw, your Honor, these persons what they charge me with, the representative of Communist Yugoslav agent. I am so guilty, if allowed to say, your Honor, no less, no more, than yourself, your Honor, on all of these charges.

Thank you, your Honor.

The Court: You may step down.

(Witness excused.) [143]

The Court: I see a number of Catholic priests in the audience. Is the pastor here from your church? I mean the Catholic Church in Seal Beach.

Mr. Reynolds: Your Honor, he was here but he had to leave, the Reverend Robert Walker.

The Court: Is the assistant pastore here?

Mr. Reynolds: Your Honor, we would be pleased to bring that gentleman to testify in this courtroom tomorrow morning.

The Court: I think I would like to hear from him.

Mr. Reynolds: We do have here the pastor of St. Anne's Church, who knew him slightly in Yugoslavia and knows him better here. I believe he is slavia and knows him better here. I believe he is here.

The Court: I understood from the witness that he is a regular attendant of the church at Seal Beach.

Mr. Reynolds: Yes, your Honor.

The Court: I would be interested in hearing from his pasto where he lives.

Mr. Reynolds: Yes, your Honor.

The Court: I wonder if John Artukovic would come forward and be sworn.

Mr. Walker: I believe there is no dispute over his place of residence, your Honor; it is at this Surfside Colony.

Mr. O'Connor: Your Honor please, while Mr. Artukovic is reaching the witness stand, there are some other people that are in that parish down in Surfside who know the petitioner [144] here and know he has been down here all that time.

The Court: We will see. Swear the witness.

JOHN A. ARTUKOVICH

called as a witness by and on behalf of the petitioner, having been first duly sworn, was examined and testified as follows:

The Court: Your name is John Artukovich?

The Witness: Yes, your Honor.

The Court: Where do you live?

The Witness: Sherman Oaks, 4144 Sherman Oaks.

The Court: You are the brother of Andrija Artukovic who was last on the witness stand?

The Witness: Yes, your Honor.

The Court: Your age?

The Witness: Forty-five.

The Court: How long have you lievd in the United States?

The Witness: About 17 years, 18 years, your Honor.

The Court: Are you married?

The Witness: Yes, your Honor.

The Court: Do you have any children?

The Witness: Yes, your Honor.

The Court: Do you have other relatives here?

The Witness: Yes, your Honor.

The Court: Your business occupation?

The Witness: Contractor. [145]

The Court: Contractor?

The Witness: That is right.

The Court: A sewer contractor?

The Witness: Sewer, water lines, roads, bridges.

The Court: Mostly excavation?

(Testimony of John A. Artukovich.)

The Witness: Mostly excavation.

The Court: How long have you been engaged in that business?

The Witness: About 10, 11 years.

The Court: You are in business on your own account?

The Witness: On my account.

The Court: Are you the owner of the business?

The Witness: Yes, your Honor.

The Court: Solely by yourself?

The Witness: Yes, sir, P. & J. Artukovich. That is a partner.

The Court: That is your partner?

The Witness: That is right.

The Court: Who is P. Artukovich?

The Witness: P. Artukovich is my cousin.

The Court: He is your cousin?

The Witness: That is right. It is called "Inc."

The Court: How many children did you say you had?

The Witness: I have two.

The Court: Are you a citizen of the United States? [146]

The Witness: Yes, your Honor.

The Court: When did you become naturalized?

The Witness: February 1940.

The Court: 1940?

The Witness: February, 1940.

The Court: Have you ever left the United States since you became a citizen?

(Testimony of John A. Artukovich.)

The Witness: Never, your Honor.

The Court: I have no further questions of this witness.

Mr. Danielson: I have none.

Mr. Walker: No questions.

The Court: You may step down.

(Witness excused.)

The Court: I wanted to ask Mr. Artukovich another question. You may answer it from there.

I think I asked you whether or not you had ever voluntarily embraced citizenship in the country now known as Yugoslavia. Did you ever become a citizen of—what is the name of the country?

The Petitioner: Yugoslavia, Communist Yugoslavia.

Mr. Reynolds: Federal People's Republic of Yugoslavia.

The Court: ——Federal People's Republic of Yugoslavia?

The Petitioner: No. No, your Honor. Never.

The Court: On the passport or certificate of identity in Ireland, did it indicate whether or not the petitioner was [147] then stateless or that he was a citizen of Yugoslavia?

The Petitioner: Your Honor, on the paper that was issued by the United States or United States General Consulate, that states stateless, not this. In this it has got nothing.

(The document referred to was passed to the court.)

The Court: On the organization of the Croatian Republic, how did a person transpire from being a

citizen of the Kingdom of Yugoslavia to a citizen of the Croatian Republic? By declaration or by oath or some ceremony?

The Petitioner: By declaration.

The Court: And did you make that declaration?

The Petitioner: No.

The Court: For yourself?

The Petitioner: No.

The Court: That is, did anyone declare that the people of the Republic of Croatia were citizens?

The Petitioner: Automatically.

The Court: They were automatically?

The Petitioner: Yes, your Honor.

The Court: Did you ever have any evidence of citizenship, that is, of being a citizen of the Kingdom of Yugoslavia, that is, the previous country?

The Petitioner: Yes, your Honor.

The Court: What did they give you, a certificate or passport or registration? [148]

The Petitioner: Registration.

The Court: Do you have that available or is that lost?

The Petitioner: That is all lost, your Honor.

The Court: Was there issued to you during the period of the existence of the Croatian Republic a registration as a citizen of the Croatian Republic?

The Petitioner: Automatically I became one.

The Court: Did they give you a piece of paper like this social security card?

The Petitioner: A registration certificate, your Honor.

The Court: Do you have that?

The Petitioner: Only my passport.

The Court: And you left Croatia in May 1945 is that right?

The Petitioner: Yes, your Honor.

The Court: The Russians were still occupying the country?

The Petitioner: Yes, your Honor.

The Court: And continued to occupy it for about six months subsequently?

The Petitioner: Yes, totally. Later Tito and Stalin together sent troops.

The Court: So that at the time you left Croatia it was not then subject to the rule of Tito?

The Petitioner: No, your Honor. [149]

The Court: I would like to have counsel give me such information as they can get concerning the lineage of the treaty because if there is no treaty of course the petitioner here is automatically entitled to be discharged without bail.

Mr. Walker: No question about that, your Honor.

The Court: How soon can you get that?

Mr. O'Connor: Your Honor please, as the proceedings now stand we have only the one treaty which is a matter of record.

The Court: I know, counsel, but there is a law library and you have to go look in the books. I am not going to dig them up for you. Somebody can find out. Certainly you can find out whether or not there was any official document of the United States or any ratification by the Senate of the United States or any promulgation or declaration by the

President of the existence of this treaty or a new treaty.

Mr. O'Connor: Very well. I think that is right.

The Court: And I am asking the United States for you to do the work and not me.

Mr. O'Connor: Is that up to the Government? Are you requesting them to do that?

The Court: I think it would seem to be me to be up to you. You are the one who is challenging the authority of the United States to hold him.

Mr. O'Connor: Very well.

The Court: How soon can you get that? [150]

Mr. O'Connor: Well, by 2:00 o'clock tomorrow.

The Court: You are pretty ambitious.

Mr. O'Connor: For a date convenient to the court.

Mr. Walker: He is more ambitious than I. I have been trying for a couple of weeks to get a bulletin out of the State Department with no success. However, I think we could perhaps call, probably both of us, Mr. Stern from the County Law Library who has made a specialty of such research, or the court could call him as his own witness. That might possibly be preferable. He doesn't wish to get involved in a political argument.

The Court: I think it is up to counsel to get that information or whatever authorities you rely on in connection with this. You applied for a petition for a writ of habeas corpus. As I say, if there is no treaty your man is entitled to go scot free without bail. If there is a treaty and a treaty is in force and

effect then the responsibility is upon me to exercise my discretion.

Mr. Reynolds: If your Honor please, we have another point which we had intended to bring up together with the challenge to this treaty, and that is the challenge to the demanding authority on the ground that at the time these alleged crimes were committed the place where they were committed was Croatia and not Yugoslavia. But we were not prepared at this proceeding, your Honor, to bring that point to your [151] Honor's attention because we believe that it required some amount of documentation and we believed that we must show that Croatia was a de jure state. We have the testimony of the petitioner that it was recognized by a number of countries which, in turn, were recognized by the United States.

The Court: I suppose that those matters of which I can take judicial notice, I mean if there are state documents and declarations and public events, but I should think that it would probably take some time to give consideration to them and to get that information.

Do you want to adduce any of that by way of expert testimony or can you secure it by documentation?

Mr. Reynolds: We will have to secure it I think by documentation.

The Court: Or can the petitioner himself testify as to where these places are or were?

Mr. Reynolds: You mean where the crimes were committed?

The Court: I do not know anything about the crimes. I mean where the places are that are mentioned in the complaint.

Mr. Reynolds: Yes, your Honor. I am certain we can produce half a dozen witnesses in this court to testify where these places are right now.

The Court: Very well. That is one point.

The other point is the treaty.

The third point is whether or not, under the laws of the [152] State of California, this complaint is any good.

So can those three points be briefed and when can you get your briefs filed?

Mr. O'Connor: That will take us a little time, your Honor.

The Court: Do you expect to produce any evidence, Mr. Walker?

Mr. Walker: I had not expected to, your Honor, other than the letter which you requested.

The Court: I think that it would probably be better for me to continue this hearing until Wednesday morning. By that time no doubt you will have your copy of the letter and by that time no doubt Mr. Danielson will have either copies of or some information concerning the various applications mentioned, and by that time no doubt Mr. O'Connor will have the law available.

Mr. O'Connor: Very well, your Honor.

Mr. Reynolds: Thank you, your Honor.

The Court: So the hearing is ordered continued until 10:00 o'clock Wednesday morning, September 19, in this courtroom.

(Whereupon, at 4:35 o'clock p.m., an adjournment was taken until 10:00 o'clock a.m., Wednesday, September 19, 1951.) [153]

September 19, 1951; 10:00 o'clock a.m.

The Court: Are there any ex parte matters?

The Clerk: No, your Honor.

The Court: In the matter of Andrija Artukovic.

Mr. O'Connor: Ready.

Mr. Danielson: Ready.

Mr. Walker: Ready, your Honor.

The Court: The matter was continued until this morning. There was to be a witness—I asked whether or not the pastor of the church to which the petitioner belonged, could be present. Is he?

Mr. Reynolds: Your Honor, I have here an affidavit from that pastor, who is an ill man and unable to come here. I would like to introduce that affidavit into the record in this proceeding and have it identified by another priest from that district who is also well acquainted with this petitioner.

The Court: Very well.

Mr. Reynolds: May I put him on?

The Court: Put him on the stand.

Mr. Reynolds: Will the clerk please call Reverend Robert Ross?

Mr. O'Connor: While we are waiting for the witness to take the stand, may I move the admission and association in [158] this case of Vincent G. Arnerich, a member of the bar of the State of California, and a member of this bar?

The Court: The motion is granted.

Come forward and be sworn.

REVEREND ROBERT ROSS

called as a witness by and on behalf of the petitioner, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name in full.

The Witness: Robert Ross.

The Clerk: R-o-s-s?

The Witness: R-o-s-s.

The Clerk: And your address?

The Witness: 14072 South Olive.

The Clerk: Los Angeles?

The Witness: Westminster, California.

Direct Examination

Q. (By Mr. Reynolds): Reverend Ross, of what church are you the pastor?

A. Blessed Sacrament.

The Court: Where is that?

The Witness: In Westminster, California.

The Court: That is in the vicinity of San Pedro?

The Witness: It is between Santa Ana and Long Beach, about half way. [159]

Q. (By Mr. Reynolds): Are you acquainted with the petitioner in this proceeding, Andrija Artukovic? A. I am.

Q. Is he a parishioner of your church?

A. No.

Q. Of what church is he a parishioner, Father?

A. Of St. Andrews Church in Seal Beach.

Q. Do you know the priest who is pastor of that church? A. Very well.

The Court: Do you know the petitioner?

(Testimony of Reverend Robert Ross.)

The Witness: I do.

The Court: How long have you known him?

The Witness: For two years.

The Court: What do you know about him?

The Witness: I first met him in August of 1949 when he came to enroll his eldest daughter, Visnja, in our school. And since that time I have talked to them possibly on 50 to 60 occasions. I consider him to be an honest and upright man.

The Court: Do the children go to your school?

The Witness: They do.

The Court: There is no school attached to the church of which he is a member?

The Witness: No, there is not.

The Court: Yours is the closest parochial school in the [160] vicinity?

The Witness: It is, your Honor.

The Court: One child goes there?

The Witness: Two children now.

The Court: Two children go there?

The Witness: Yes.

The Court: Do you know what he does?

The Witness: Yes, he works for his brother.

The Court: What is his general reputation in the community where he lives?

The Witness: Most excellent.

The Court: Have you discussed this situation with him and his history of activities in his native country?

The Witness: I have.

The Court: You have?

(Testimony of Reverend Robert Ross.)

The Witness: Yes.

The Court: Do you have a feeling that if he were released by this court on bail in the exercise of discretion which is my responsibility here, that if he were ultimately required to surrender himself by the authorities of the United States to Yugoslavia that he would do so?

The Witness: He would.

Q. (By Mr. Reynolds): Have you ever known the petitioner by any other name than Andrija Artukovic? [161]

A. I have not.

Q. From his actions known to you and his statements to you, do you consider him a man of close family connections, one who would be most loath to leave his family at any time?

A. He would be.

Mr. Reynolds: Your Honor, the witness has indicated a close acquaintance with the pastor of St. Ann's Church, who was unable to appear here because of illness.

The Court: Do you know the pastor of St. Ann's Church?

The Witness: Yes, I do.

The Court: What is his name?

The Witness: Father O'Sullivan.

The Court: Is he ill?

The Witness: He has been for several years. He is not in good health at all.

The Court: He is unable to travel?

The Witness: Yes, at the risk of his health.

(Testimony of Reverend Robert Ross.)

Mr. Reynolds: I desire to have the witness identify the signature of the pastor to this letter of testimony as to the character of the petitioner, and if the court please I would like to have this witness read this letter into the record.

The Court: Very well.

The Witness: (Examining document) It is his signature. [162]

"Hon. Peirson M. Hall, Judge,
"United States District Court,
"Los Angeles, California.

"Dear Sir:

"I am informed by counsel and the wife of Andrija Artukovic, a resident of Surfside Beach nearby, and my parishioner, that it is desired that I appear in your court and testify to my knowledge of Mr. Artukovic and his character and conduct as known to me. I must regretfully ask that I be excused from making a personal appearance in your court by reason of my poor health which makes even a short trip unpleasant and dangerous to me personally, and respectfully ask that you accept the statements herein in lieu of my personal appearance and testimony.

"I am a citizen of the United States and reside at 340 Tenth Street, Seal Beach, California. I am the pastor of St. Ann's Catholic Church, also at Seal Beach.

"I have known Andrija Artukovic since he took up residence at Surfside Beach which I recall to

(Testimony of Reverend Robert Ross.)

have occurred in the month of July 1948. I have seen him frequently at our church together with his wife and children. In fact his youngest child was baptized at St. Ann's Church. I have always [163] known him and his family to go by the name Artukovic.

"I have had opportunity to talk on several occasions with Mr. Artukovic and to the best of my observation he is a man of conservative and very deep religious beliefs whom I believe would make an excellent resident and citizen of the United States. His attachment to his family is evident and I believe he is well liked among his neighbors at Seal Beach.

"I believe that Andrija Artukovic is familiar with and attached to the democratic principles of the government of the United States, and would sustain such government to the best of his ability. His reputation is good, and I have no knowledge of his associations and memberships other than favorably.

"Yours very truly,

"(Signed) THOMAS O'SULLIVAN

"Rev. Thomas O'Sullivan,

"Pastor, St. Ann's Church."

Q. (By Mr. Reynolds): Are you familiar with the signature of Reverend Thomas O'Sullivan?

A. I am. [164]

Q. Do you certify the signature attached to that document to be that of Thomas O'Sullivan?

(Testimony of Reverend Robert Ross.)

A. I do.

Mr. Reynolds: The petitioner desires to offer the affidavit into evidence.

The Court: It has been read into the record so it is a part of the record. It may be filed as part of the files, not as an exhibit.

Q. (By Mr. Reynolds): Father Ross, do you know if the petitioner in this proceeding has endeavored to bring up his children in accordance with his religious beliefs? A. He certainly has.

Q. Is he a man that would, in your opinion, make them worthy citizens of the United States if they had the opportunity?

A. They would be very good citizens.

Q. Do you consider that the petitioner, if given an opportunity to reside in the United States and make application for citizenship, would make a worthy citizen of the United States?

A. Yes, one of whom we would all be justly proud.

Mr. Reynolds: I have no further questions, your Honor.

The Court: Any questions, Mr. Danielson?

Mr. Danielson: No questions, your Honor. [165]

The Court: Mr. Walker?

Mr. Walker: No questions, your Honor.

The Court: Step down.

(Witness excused.)

The Court: Does anybody have any further evidence to offer at this time in connection with the matter of admission to bail?

Mr. Danielson: If your Honor please—this is not evidence your Honor requested the Government at the last session to produce the Immigration and Naturalization file pertaining to this petitioner. I have here under the certification of the Acting District Director the file of the local office of the Immigration Service.

There is also present in court Mr. Howard Field the district adjudications officer, who can explain the file in the event that that should be necessary.

The Court: Very well. Have you examined the file, Mr. O'Connor, or Mr. Reynolds?

Mr. Danielson: No one has examined the file, your Honor.

The Court: Is there in that file the applications, the one missing application? There were copies produced of several, as I recall.

Mr. Danielson: I have here an index of all exhibits in the file, your Honor. It is not a part of the file, but I am [166] happy to make it available to whomever may wish to use it.

I should like to point out that the index lists 34 exhibits, and Exhibits 9 through 34 inclusive are in the file. Of the first eight several, the record indicates, were returned to counsel at the time that they were produced before the immigration authorities.

Exhibit No. 1, application for adjustment of status, Form I-500, apparently was in duplicate. The original is no longer with the local office but has been sent apparently to Washington. However, there is in the file a duplicate of that same exhibit.

The Court: I see. If you will submit it to counsel, let them examine the file, together with the index, and it may be that they may wish to offer something in the file.

Mr. Danielson: I respectfully request also, your Honor, that inasmuch as this is not a copy but the file of the Immigration Service——

The Court: It will be returned, and anything offered, if offered, they can furnish a photostatic copy.

Mr. Danielson: Thank you, your Honor.

The Court: Which will be taken through the clerk's office.

Do you wish a few moments to examine the file?

Mr. Reynolds: I see already, your Honor, that there are some very important documents, so far as the determination of [167] the bona fides of this man are concerned, are missing from this file and, your Honor, counsel for petitioner cannot produce them and I will explain why.

Exhibit No. 3, copy of application for extension of temporary stay, dated March 18, 1949, and copy of application for extension of temporary stay dated January 25, 1949. Your Honor, on those dates the petitioner filed the original with the Immigration and Naturalization Service and at the date of this hearing, May 7 and 8 of this year, he filed the copies. Your Honor, the petitioner has no further evidence of that and all of the copies of it are in the possession of the United States Government, and we are unable to produce them. And those are very important because they show clearly that this man

made his identity officially known to the United States Government as long ago as January 25, 1949.

The Court: Are there copies in the file there?

Mr. Reynolds: Your Honor, I cannot discover them. I have examined the file. It starts with Exhibit 9 here in the record.

The Court: You went through it rather fast.

Mr. Reynolds: Your Honor, the testimony is here and then the exhibits. The testimony stops and the exhibits start with No. 9. There are eight apparently not incorporated in this record.

Mr. Danielson: Your Honor please, I believe if counsel [168] will take the time to look behind the exhibits he will find that there are documents which are apparently duplicates of some of the first eight. The others were returned to counsel.

The Court: In addition to those documents, Mr. Reynolds, will you have any further evidence at this hearing?

Mr. Reynolds: Yes, your Honor.

The Court: Suppose you proceed with that and then I will take a short recess while you examine the file.

Mr. Reynolds: Counsel on Monday made reference to the fact that a bill was introduced in Congress in behalf of the petitioner completely identifying him by his name Andrija Artukovic and also indicating that he entered the country under the name of Anich. Your Honor, I believe this bill speaks for itself and needs no identification from an expert, and I desire to offer it in evidence.

The Court: It will be marked in evidence as Pe-

titioner's exhibit next in order, whatever it is.

The Clerk: No. 10.

(The document referred to was received in evidence and marked Petitioner's Exhibit No. 10.)

The Court: What is the date?

The Clerk: March 11, 1949, your Honor.

The Court: What is the status of the bill? Is it pending?

Mr. Reynolds: No, the bill expired in the Congress, in [169] the 81st Congress, your Honor. It was not reintroduced because in the meantime the Displaced Persons Act of 1948 had been amended and this petitioner and other members of his family could qualify under the Act, at least upon its surface.

The Court: Very well.

Now you mentioned the fact that the petitioner has a child born in the United States.

Mr. Reynolds: Yes, your Honor.

The Court: Have you the birth certificate?

The Witness: Yes, your Honor.

I also would like to introduce the baptismal certificate of Radoslau Artukovic, who was born in Ireland under the name of Anich, and I would like to summon as a witness Reverend Marius Matic who was the Catholic priest present at that ceremony.

Father Marius Matic, will you step up?

MARIUS MATIC

called as a witness by and on behalf of the petitioner, having been first duly sworn, was examined and testified as follows:

(Testimony of Marius Matic.)

The Clerk: State your name in full, please.

The Witness: Marius, M-a-r-i-u-s; Matic, M-a-t-i-c.

The Clerk: And your address?

The Witness: 18708 South Clarkdale, Artesia.

Direct Examination

Q. (By Mr. Reynolds): Father Matic, of what church are you pastor or assistant pastor?

A. I am assistant pastor of Holy Family Church in Artesia.

Q. Are you acquainted with the petitioner in this proceeding? A. Yes, I am.

Q. Are you acquainted with the members of the petitioner's family? A. Yes, sir.

Q. Did you at any time to your recollection baptise a child of the petitioner in the United States?

A. Yes, I did.

Q. Will you please tell us what child you baptised?

A. I baptised Radoslau in the St. Ann's Church in Seal Beach?

Q. Under what named did you baptise Radoslau? A. Artukovic.

Q. Do you recollect approximately what day and what year and what month you baptised this child?

A. That was 1948. I don't remember the date.

Q. Do you remember the month?

A. I suppose it was in August or July—July rather. [171]

(Testimony of Marius Matic.)

Mr. Reynolds: Your Honor, the petitioner would like to offer in evidence certificate of baptism to be identified and present to this witness for identification.

The Court: No. 11.

(The document referred to was received in evidence and marked Petitioner's Exhibit No. 11.)

The Court: Is that the certificate of baptism which you issued?

The Witness: Yes, sir, your Honor.

Q. (By Mr. Reynolds): Are you the only pastor shown on that certificate?

A. There is the name of Father Reverend T. O'Sullivan. He is pastor of St. Ann's Church. He issued this certificate and I baptised Radoslau.

Q. Will you read the date from that exhibit of the baptism?

A. It was baptised on the 23rd day of July, 1948.

Q. Would you read the name of the child baptised?

A. Radoslau Andrew Artukovic.

Q. Would you read the name of the male parent?

A. Son of Andrew M. Artokuvic and Anna Maria Heidler.

The Court: Is that the petitioner here?

The Witness: That is the petitioner here: yes, your Honor.

The Court: And his wife? [172]

The Witness: And his wife.

(Testimony of Marius Matic.)

The Court: Both were present?

The Witness: Yes, your Honor.

The Court: And the child is also present in the courtroom at this time?

The Witness: Yes.

Mr. Reynolds: I have no further questions to ask this witness upon the point of baptism.

The Court: Mr. Danielson?

Mr. Danielson: No questions.

The Court: Mr. Walker?

Mr. Walker: No questions.

The Court: Step down.

(Witness excused.)

Mr. Reynolds: Your Honor, the petitioner desires to offer in evidence the birth certificate of his child Rujica Ana Artukovic. We do not have here the civil officer of the jurisdiction in which this birth occurred, but I believe the record will speak for itself, your Honor.

The Court: Is that a certified copy?

Mr. Reynolds: Yes, your Honor. I have a photostat and the original.

The Court: The photostat may be offered in evidence.

Mr. Walker: May I examine the document, your Honor?

The Court: Surely. [173]

(The document referred to was exhibited to counsel.)

The Clerk: No. 12.

(The document referred to was received in evidence and marked Petitioner's Exhibit No. 12.)

Mr. Walker: I don't care to quibble over the details of authenticity, but I just wanted to see it.

The Court: What is the date of birth?

Mr. Reynolds: December 10, 1950, your Honor.

The Court: Very well.

Mr. Reynolds: The petitioner has no further evidence to offer at this time, your Honor, in connection with the matter of bail.

The Court: Very well.

Mr. Danielson?

Mr. Danielson: The respondent has no evidence, your Honor.

The Court: Mr. Walker?

Mr. Walker: Yes, your Honor, I do.

The court requested on Monday the production of certain correspondence from the Yugoslav Embassy to the State Department. I have, I believe, now the complete correspondence.

Th Court: Have you exhibited it to counsel?

Mr. Walker: I have not.

(Exhibit documents to counsel.)

Mr. Walker: What I will read will be two letters from [174] the Embassy to the State Department which tie in with the two letters from the State Department to the Embassy.

The Court: Here already in evidence?

Mr. Walker: Yes.

While counsel is examining the documents——

The Court: You had better wait. I do not think they can read and listen too.

Mr. Walker: I will wait until they are through, your Honor.

The Court: Is that the letter of March—what was the date?

Mr. Walker: This is the letter of March 31st and a subsequent letter.

Mr. O'Connor has asked me the date of the telegram, which is September 18, which was yesterday.

This is a letter from Ambassador Popovic, Yugoslavian Embassy, addressed to me and is sent in response to the request of the court for the production of the correspondence and in answer to the petitioner's charge of bad faith on the part of the Yugoslav government in beginning this proceeding.

I take it, your Honor, that the only purpose in introducing any of this evidence is a question in your Honor's mind of the last line or two of Paragraph VI of the treaty referring to the motive for which extradition is sought. I should preface my reading of the telegram by stating I do not think [175] that that can properly influence the discretion of the court at this hearing, as to whether the court should or should not grant bail, for this reason, your Honor, that it puts the court in the position of prejudging or gambling on the probabilities of the outcome, successful or otherwise, of a defense which can only be heard by another tribunal at a different date.

However, here is the correspondence. This is the note to the State Department of March 31, 1951:

"Ambassador has honor to refer to notes of his predecessor of July 23, 1946, requesting extradition of certain Yugoslav war criminals among whom Artukovic period At that time Artukovic was believed to be somewhere in occupied Austria or Italy. Stop According to latest information Artukovic is now in California period He has been proclaimed a war criminal for the following crimes colon Betrayal of the people comma assassinations and massacres comma looting comma large scale torturing and ill-treatment in concentration camps comma organization of armed struggle against the allied and the national liberation arm of Yugoslavia semicolon military comma political and economic collaboration with and serving the enemy period This will be seen from the enclosed documents [176] from the Yugoslav war crime commission period paragraph In view of fact that Artukovic is one of the most notorious war criminals responsible for innumerable and unhead of crimes committed upon the people of Yugoslavia during the last war the Ambassador has honor to reiterate request that immediate steps be taken by US authorities to apprehend the said war criminal and hand him over to Yugoslav authorities for trial and punishment well deserved long ago paragraph In reiteration request Ambassador is confident that US government comma guided by principles of interallied decisions during the last war and especially by declaration of October 1943 on bestialities as well as by general international

practice in similar cases comma will undertake all steps to hand over this notorious war criminal to Yugoslav authorities and thus help put him on trial in the country where he committed these abominable crimes paragraph Ambassador renews to the Secretary expression of his highest esteem."

That is the end of that letter.

Now by way of explanation of some of the material in that letter, your Honor, apparently the extradition was first requested and this letter refers to the international practice [177] of the extradition of war criminals and a United Nations resolution of October 31, 1947.

Now the reply of the State Department to this previous communication was that the resolution, that is, the United Nations resolution which, incidentally, I understand was accepted by the American delegation but it has not yet been codified by the Congress of the United States——

The Court: That is the United Nations resolution of what date?

Mr. Walker: October 31, 1947.

Now there is a subsequent letter to the one I just read into the record of August 30, 1951:

"Ambassador has honor to refer to SD notes of May 14 and May 21 1951 regarding extradition Artukovic and to communicate following colon As stated in Embassy note of March 31 Yugoslav government considers that Artukovic one of most notorious war criminals who in the course of last war and during enemy occupation between 1941 and 1945 committed on the territory of Yugoslavia in-

numerable and most abominable crimes should be extradited upon request of Yugoslav government in accordance with principles of interallied decisions proclaimed during war and various resolution of UN General Assembly among others of October 31 1947 providing [178] for extradition and punishment of those who during last war committed bestialies upon peaceful innocent people paragragh While firmly believing that this view is correct and warranted Yugoslav government nevertheless wished without prejudice to its position and solely to secure that Artukovic cannot escape trial for his bestial crimes comma to comply also with the suggestion made in the notes of the Department of State of May 14 and May 21 1951 period Accordingly Ambassador has honor to communicate that on August 29 Consul General Ivancevic filed with US Commissioner Southern California Los Angeles complaint under oath in accordance with treaty of October 25 1901 had Title 18 USC 3184 requesting the immediate arrest and extradition of Andrija Artukovic paragraph Thus the necessary forms of law having been complied with Ambassador with reference to statement in para 2 second sentence of SD note of May 21 reiterates request that Department undertake all necessary measures so that according to provisions of treaty of 1901 Artukovic be extradited to competent authorities of Yugoslavia as soon as possible paragraph Ambassador renews to Secretary of State assurance of highest consideration"

That is signed by Ambassador Popovic.

The Court: And the date of that again was?

Mr. Walker: It was the day after the arrest. That would be August 30, 1951.

Now the point in which your Honor is undoubtedly interested in that last letter is the statement that without prejudice to its demand for the extradition of Artukovic as a war criminal under this United National resolution.

The Court: Have you had copies of those made? While they are read into the record, we are not getting a daily transcript.

Mr. Walker: I have copies of that one; yes.

The Court: Do you have copies of both of them?

Mr. Walker: I have two or three here and I haven't had a chance to copy them all.

(Distributing documents to counsel.)

Mr. Walker: I will hand the original to the court.

The Court: For filing?

Mr. Walker: I will ask that it be introduced in evidence, your Honor.

The Court: Very well. This is both of them?

Mr. Walker: Both of them together.

The Court: Very well. This will be marked as—how do you describe your client here? The intervenor?

Mr. Walker: I have been wondering. Demanding government [10] is probably the best description.

The Court: Very well. That will be Demanding Government's Exhibit A.

The Clerk: DG-A.

The Court: Yes.

(The document referred to was received in evidence and marked Exhibit DG-A.)

Mr. Walker: In addition, your Honor, to the telegram which I have just introduced——

The Court: The telegram is the text of the letters?

Mr. Walker: Yes, your Honor. There is perhaps an abbreviation or an article or two left out.

Also I have received another long telegram from Ambassador Popovic which explains from the viewpoint of the ambassador the views taken by the Embassy and the State Department. I can use this in argument or I can introduce it in evidence. It doesn't make much difference. I would like to read it into the record.

The Court: Perhaps it might better be used in argument on the matter. Do you have any further evidence?

Mr. Walker: Possibly. Your Honor indicated on Monday some question as to the effectiveness of the treaty. If the court is not satisfied on that point I do have evidence to show that it is and at all times has been in full force and effect. [181]

The Court: I am not satisfied on the point.

Mr. Walker: Very well. Then I will defer argument and the use of this other material and proceed with my evidence. Is that what the court wishes?

The Court: I think as far as all of your evidence is concerned, what will be oral or documentary evidence of which the court can take judicial notice—is that right?

Mr. Walker: It will be both. I think the court can take judicial notice of the material that is to be covered in the oral evidence. Then I have another telegram which has some evidentiary effect from the Embassy in Washington. I would like to read that telegram first, if I may.

The Court: Very well.

Mr. Walker: This is a telegram dated September 19, 1951, addressed to me, from Ambassador Popovic, and reading as follows:

"The government of Yugoslavia as well as the government of US have always recognized the extradition treaty of 1901 as in force between the two countries period Under the title quote treaties and other international agreements in force between the United States and Yugoslavia unquote the US State Department office of the legal adviser assistant for treaty affairs issued on April 30 1947 an official list in which as treaty No. 3 appears the following [182] colon quote extradition treaty between the United States and Serbia period Signed at Belgrade October 25 1901 semicolon ratification exchanged at Belgrade May 13 1902 period para 32 state 1890 treaty series 406 11 treaties Malloy 1622 period unquote para In Malloy page 1622 the following data appear quote Extradition treaty concluded October 25 1901 period Ratification advised by Senate January 27 1902 period Ratified by President March 7 1902 period Ratifications exchanged May 13 1902 period Proclaimed May 17 1902 unquote period This also proves ratification period"

I have oral evidence, I think, your Honor, which will show——

The Court: I would be interested in the genealogy of the treaty since that date up to now.

Mr. Walker: I intend to show continuity in the Yugoslav government and in the relations between that government and the United States between 1901 to the present date.

The Court: Yes.

Mr. Walker: Then in the absence of any abrogation treaty, the treaty would remain in effect.

The Court: I notice that the treaty here has a provision in it that it shall remain in force for a period of six months after either of the contracting governments shall have [183] given notice of a purpose to terminate it.

I seem to have a vague recollection—I am not at all sure of it—but I seem to recall that Tito renounced all treaties with the United States at some time or other.

Mr. Walker: I have no information in that respect. Perhaps my witness will have, your Honor. At any rate, I think that will not be my burden of proof. I will simply show the continuity.

The Court: I do not know. Do you have any information to that effect, or have you researched the public files and documents?

Mr. Reynolds: Yes, your Honor, we have information to that effect as expressed in notes by the Yugoslav government to the United States Government in 1946.

The Court: Are those the notes you refer to in

your brief that you filed?

Mr. Reynolds: Yes, your Honor.

The Court: Well, those are not renunciations.

Mr. Reynolds: I know, your Honor, but they certainly are a failure on the part of the Yugoslav government to recognize the continuation of those treaties. The State Department specifically requested assurances on those points and the Yugolav government just as specifically refused to give assurances.

Mr. Walker: Your Honor, has there been a supplemental [184] memo filed?

The Court: Yes, there was a memo that appeared on my desk this morning, just before I came to court. Have you not been served with it?

Mr. Reynolds: We were going to serve it before I started the argument. I thought we were still on the question of bail.

The Court: We are on the question of bail yet.

If you have any more evidence on the question of bail, or no more evidence, Mr. Walker, on the question of bail, I might recess until counsel goes through that Immigration file.

Mr. Reynolds: Your Honor, counsel has taken opportunity to go through this Immigation file and counsel repeats that the very documents——

The Court: Are there any documents in there that you want?

Mr. Reynolds: No, your Honor.

The Court: Very well. Will you return the file then to Mr. Danielson.

(The file referred to was returned to Mr. Danielson.)

Mr. Walker: Do you care to take a recess, your Honor?

The Court: No. Do you have any further evidence that goes to the question of bail? Or are you confining yourself to the matter of argument?

Mr. Walker: Not on the question of bail. It will be a [185] matter of further argument.

Mr. Reynolds: Your Honor, may I inquire which of the telegrams which we have been served copies of go to the question of bail or to the question of political aspects?

The Court: It all goes to the question of bail.

Mr. Reynolds: Then before we leave the matter of bail; may we have argument on this? The reason I ask that, your Honor: It is perfectly clear from these telegrams and from a letter which has come to the notice of counsel this morning, that the Yugoslav government isn't even consistent in its demands upon the State Department and the complaint filed with the United States Commissioner in the extradition proceedings.

Mr. Walker: I do not see what that has to do with the question of bail.

The Court: You have another letter?

Mr. Reynolds: Yes, we have a letter addressed by the Department of State in which——

The Court: Show it to counsel before you talk about it.

Mr. Reynolds: ——in which the designate the

note of August 30 as a formal demand upon the State Department for extradition.

Now we would like to point out, before we leave the question of bail, that there is a distinct variation between the Yugoslav ambassador's note of August 30 and the terms of the complaint. [186]

Mr. Walker: The document Mr. Reynolds has shown me is addressed to Mr. Dolinar.

Mr. Reynolds: Yes. I will produce Mr. Dolinar. I intended to do so. He is here in court.

The Court: Do you have any further evidence, Mr. Walker?

Mr. Walker: Yes.

The Court: That goes to this question?

Mr. Walker: It goes to the question of the effectiveness of the treaty.

Mr. Reynolds: Is that on bail?

Mr. Walker: Not on bail, no.

Mr. Reynolds: I don't even believe that this should be considered on bail. I think this affords ground for dismissal of the complaint as excluded by Paragraph VI of the treaty.

The Court: We will get to that later, but I first have to decide the question of bail. It goes to the question of bail if it appears from these various documents that there is vagueness or——

Mr. Reynolds: Bad faith, your Honor.

The Court: ——bad faith or if the charges are nebulous and ephemeral and the like. So will you proceed with your evidence.

Mr. Walker: My mouth dropped for a moment there at the suggestion that the charges of people

being murdered can be [187] nebulous and ephemeral. They are very serious charges. They are charges of murder, which is a common law offense. It may have been political, it may not have been political.

The Court: That is what it says in the complaint, the complaint that is filed with the Commissioner. Of course that is not before me if, however, from the positions which have been taken by the demanding government it appears that that is not the offense for which they want this man, then that might make them nebulous which would enter into, howsoever slight, the matter of the exercise of this court's discretion as to whether or not it should or should not grant bail.

Mr. Walker: But a person can be wanted for burglary or robbery or murder, for many things. It is not denied. It is emphasized that he is wanted as a war criminal, but we must remember that the government may not be entitled to extradite unless—that is, the Yugoslav government may not be entitled to extradite him—as a war criminal unless some ratification is made of that United Nations Assembly report.

The Court: Do you have the text of that United Nations resolution?

Mr. Walker: I don't, your Honor; no. I just received this particular letter last night. I have had no opportunity to look for it.

But the crimes included in the demand for his person as [188] a war criminal might include these other common law offenses of murder, but they cer-

tainly do not exclude them, and the fact that they want him for trial as a murderer, a simple offense, does not indicate in any way that the purpose is to prosecute him as a war criminal or for political offenses.

Now the treaty specifically prohibits the demanding government from trying the accused for offenses other than those for which he is extradited, and I have a case squarely in point on the fact that the motives of the demanding government cannot be impunged, if a friendly government, and it cannot be assumed that he will be tried for any other offense.

The Court: Did they not say in the telegram here——

Mr. Reynolds: Yes, your Honor.

The Court: ——the last telegram that you read, the August 30th telegram?

Mr. Walker: I don't think they did, no. To what language do you have reference, your Honor?

The Court: Hand me the telegram, Mr. Clerk.

(The document referred to was passed to the court.)

The Court: It states:

"Yugoslav government nevertheless wished without prejudice to its position and solely to secure that Arfukovic cannot escape trial for his bestial crimes."

Mr. Walker: It depends entirely on the interpretation [189] you put on it, your Honor, and I interpreted it, and I think it is a correct interpretation and a fair interpretation, that failing to ex-

tradite him as a war criminal they wish him now as a common criminal for the particular offenses charged in the complaint, and I reiterate that those charges are not now on trial in this court.

Mr. Reynolds: Your Honor, if I may be heard just a moment?

Mr. Walker: What I am trying to point out, your Honor, is that the Yugoslav consul of San Francisco filed a complaint on August 29 and on August 30 the Yugoslav ambassador filed a formal demand with the State Department. The crimes alleged in one and the crimes alleged in the other are entirely different. There is no specific crime at all alleged in the formal demand of August 30 and it is clear from this letter which counsel desires to introduce in evidence that the State Department regards that as a formal demand.

The Court: If you have no objection the letter will be marked in evidence. Do you have any objection, Mr. Walker?

Mr. Walker: If you will give me a moment to straighten our two or three different channels of thought.

The Court: Very well.

Mr. Walker: I will stipulate that it may go in.

The Court: Very well. No. 13. [190]

(The document referred to was received in evidence and marked Petitioner's Exhibit No. 13.)

Mr. Walker: Counsel can identify it by a statement perhaps as to whom it is addressed.

Mr. Reynolds: I am pleased to do that, your Honor.

The Court: Are you willing to accept counsel's statement?

Mr. Walker: Yes, certainly. I would like to know the connection with this matter.

Mr. Reynolds: Your Honor, if counsel for the Yugoslav government would like to know this gentleman's connection with the matter, I would be glad to put him on the stand right now.

The Court: Why don't you?

Mr. Reynolds: This letter is addressed to Mr. Nick Dolinar, D-o-l-i-n-a-r, 704 College Street, Los Angeles 12, California.

It is on the stationery of the Department of State, Washington, signed "Sincerely yours, For the Secretary of State, Grace B. Ruckh, R-u-c-k-h, Information Officer, Division of Public Liaison."

And if counsel for the Yugoslav government or your Honor would like to know the connection of this man with this matter, I will be glad to produce him and put him on the stand. [191]

The Court: Counsel said he is willing to accept your statement as to who he was. Did I not so understand you, Mr. Walker?

Mr. Walker: Yes.

Mr. Reynolds: Then he added another remark and I was perfectly willing to oblige him.

The Court: Make your statement as to who he is.

Mr. Reynolds: I did. He is a citizen of the United States and a resident of Los Angeles and a friend of the petitioner, your Honor.

The Court: Very well.

Mr. Walker: Your Honor, I am going to ask what we are considering at the moment. Is it this letter?

The Court: No, that is in evidence.

Mr. Walker: I can't see any connection with this telegram.

The Court: He wanted to put it in evidence and you said you had no objection.

Mr. Walker: I don't.

The Court: I would like to inquire of the petitioner here, if you are through with your evidence now.

Mr. Reynolds: Yes, your Honor.

The Court: The petitioner rests?

Mr. Reynolds: Yes.

The Court: Very well. [192]

Mr. Walker: I have shown this telegram to counsel. I have not had copies of it made, but I would like to have this marked as the exhibit next in order.

The Clerk: Demanding Government's Exhibit B.

(The document referred to was received in evidence and marked Exhibit DG-B.)

DEMANDING GOVERNMENT EXHIBIT B

[Western Union Telegram]

LA023 WM07

W. CTAO12 RX PD—CT Washington DC 19 915A

Ronald Walker—

458 South Spring St LosA—

The Government of Yugoslavia as well as the Government of US have always recognized the ex-

tradition treaty of 1901 as in force between the two countries. Period under the title quote treaties and other international agreements in force between the United States and Yugoslavio unquote the US State Department Office of the Legal Adviser Assistant for Treaty Affairs issued on April 30, 1947 an official list in which as treaty No 3 appears the following colon quote Extradition treaty between United States and Serbia period Signed at Belgrade October 25 1901 semicolon ratification exchanged at Belgrade May 13 1902 period para 32 State 1890 Treaty Series 406 11 Treaties Malloy 1622 period unquote para In Malloy page 1622 the following data appear quote Extradition treaty concluded October 25 1901 period Ratification advised by Senate January 27 1902 period Ratified by President March 7 1902 period Ratifications exchanged May 13 1902 period Proclaimed May 17 1902 unquote period This also proves ratification period

Ambassador Popovic

The Court: This is the one you read a moment ago?

Mr. Walker: Yes.

The Court: Very well.

I think it might be appropriate if we took a recess at this time so that everybody could gather his wits a bit on the subject.

I might state to counsel that in thinking this matter over since the last hearing, it has occurred to me that the questions of law that are raised are novel, they are questions with which this court does not

deal every day, they are exceedingly serious and I do not feel that either counsel should be forced into the decision of making or writing precipitous briefs in a hurry, nor the court into a position of making a precipitous decision in the matter.

The question of law relating to the validity of the treaty and the questions that I indicated the other day are present. In addition to that, there is a question that arises as to how far this court can go on a petition for writ of habeas corpus in a matter such as this. I noticed just now [193] in reading the petition for the writ that all the petitioner wants is bail fixed. They apparently have not prayed—I was under the impression that the petition was for the complete discharge of the petitioner.

Mr. Walker: I was going to ask your Honor if the issues shouldn't be clarified because it was certainly my understanding that it was only an application for bail.

The Court: That is apparently what it is.

Now, as I say, the other day I was under the impression that they were asking for the complete release and discharge of the petitioner.

Now if the petitioner desires to raise those issues they are going to have to amend their petition. Do you desire to raise those issues or do you desire to leave this as only a petition for bail?

Mr. O'Connor: No, your Honor, since the evidence and the matter has taken the course it has, we desire to amend the petition and ask for a complete release and discharge from custody.

The Court: When will you get your amended petition filed?

Mr. O'Connor: At 2:00 o'clock this afternoon.

The Court: I think you should also state more fully and specifically and completely the various grounds upon which you rely for his complete discharge. [194]

Mr. O'Connor: Very well.

The Court: There will then be two questions before the court: first, whether or not the petition should be granted and the petitioner completely discharged on matters of law only; and, second, in the event that that were concluded against the petitioner the questions of mixed law and fact which require this court to exercise its discretion as to whether or not bail should or should not be granted pending the hearing before the Commissioner.

Mr. Walker: On the first question, your Honor, I take it from the cases that that questions only the jurisdiction of the Commissioner, in other words, the sufficiency of the complaint itself.

The Court: That is right. There is a serious question in my mind as to whether or not the complaint is sufficient or whether or not it would be void for uncertainty. Of course I suppose that that can be cured by filing an amended one; it can easily be cured by filing an amendment. There is no crime recognized in the treaty as causing the murder of.

Mr. Walker: Perhaps I had better reserve any argument until the amendment is made.

The Court: You are preparing to amend your complaint?

Mr. Walker: No, I am prepared to meet the argument.

The Court: To meet the argument?

Mr. Walker: Yes. [195]

The Court: You are not preparing to amend your complaint before the Commissioner?

Mr. Walker: No, not at the present moment. Of course I can change my mind on that very rapidly.

The Court: What I was going to say was this, that I am giving consideration to releasing the defendant on bail pending the matter of briefing and setting the matter down again for argument on the question of a writ if the petition for the writ is amended.

In other words, I would not propose at this time to enlarge him on bail conditioned upon his appearance before the Commissioner but conditioned only upon his appearance here at further hearings on the writ of habeas corpus.

Mr. O'Connor: In view of the seriousness of this offense and in view of the necessity of getting the documents from the State Department and from great length, that is, the most justifiable and most just way of handling this matter.

The Court: I am just giving consideration to it. I do not want any argument pro or con. I thought I would let that suggestion out during the recess.

(Short recess.)

Mr. Walker: Your Honor, I wonder what is the next proper step in the proceedings. You have requested the petitioner to amend the petition. There-

fore I would prefer to reserve any evidence as to the points I expect to cover until I see [196] the amendment.

I would like further argument on the question of discretion on bail. If the court will indicate what order he wants such argument presented, I would appreciate it.

The Court: It would seem to me that probably the first thing that should be done is for the petitioner to amend the petition so that the court may know precisely what the position is other than as counsel have stated it in oral argument, and precisely what relief they wish.

Mr. Walker: Yes.

Mr. Reynolds: Your Honor, we are amending the writ. Mr. O'Connor is right now preparing an amendment to the writ.

The Court: And that will be ready at 2:00 o'clock?

Mr. Reynolds: It may even be ready within the hour, your Honor. I couldn't tell exactly how long it will take. We started at once as soon as your Honor left the bench.

Mr. Walker: I am faced with a new petition and I want an opportunity to consider it.

Mr. Reynolds: Has your Honor had opportunity to think over the possibility of admitting this man to bail and giving both counsel full opportunity to file full briefs?

The Court: I have been thinking about that.

Mr. Reynolds: Your Honor, counsel for the petitioner deem that an entirely proper procedure.

The Court: I have been thinking about it ever since the [197] petition started. I do not think there is any doubt but what the court can enlarge the petitioner on bail pending a hearing on the writ of habeas corpus.

Mr. Walker: I think there is serious doubt, your Honor.

The Court: On the final hearing. You think there is serious doubt?

Mr. Walker: Yes, I do. I would like to be heard on it.

The Court: Yes.

Mr. Walker: I am only asking the court to indicate how he wants the argument to proceed. In other words, if that is the point which we are now discussing I want a chance to argue it before the court rules. If the court thinks that the petitioner should have the first shot at the argument, I will accede to that suggestion.

The Court: As I indicated, there are now three things, or will be in the petition if amended as counsel have indicated they expect to do: first, the questions of of law as to whether or not the petitioner should be discharged entirely.

Secondly, on that petition whether or not the petitioner should be enlarged on bail pending the hearing before the Commissioner.

The third one is and will be whether or not this court should or has the power to enlarge him on bail pending any final determination of the petition for the questions raised on the petition for the writ.

As I have indicated, I would certainly like to give

counsel more of an opportunity than has been demonstrated in the briefs filed so far for research and examination into the questions of law. And I would like further opportunity to study them than I would have during the trial of other lawsuits, and while only hearing argument on the bench. I had in mind that if I had the power to and saw fit to do so, that I would release the petitioner on bail for such period of time as counsel may desire to file their briefs, and then set the matter down for argument, further argument and hearing on the petition again, the conditions of that bail to be that the petitioner shall respond to the orders of this court in connection with the petition for a writ.

Mr. Walker: I am very much in accord with the court's suggestion that it should be submitted on briefs, but I do not like it to be a condition of that method of proceedings that the prisoner be enlarged upon bail.

In other words, I think the matter should be fully submitted and fully argued. It is a serious matter. It has definite international complications, as I will show in my later arguments, and it is a matter that cannot be passed on lightly.

The Court: I do not need to have that possibility suggested to me.

Mr. Walker: I merely state that I would not like that [199] to be a condition of a time period for the serious consideration of it.

The Court: As counsel knows, the matters of hearing on petitions for writs of habeas corpus take precedence over all other matters. And, as counsel

has indicated and agrees, this is a matter which requires some time for study and reflection. So I am giving serious consideration if the petition is amended as to whether or not I should release the petitioner on bail pending the filing of the briefs and the final hearing on the petition and the decision of the court.

Mr. Walker: My only question for your Honor was, if that was in condition of the extension of time for briefing and argument.

The Court: I would not call it a condition.

Mr. Walker: In other words, I want to be heard on the question of his conditional release or provisional release pending such further argument.

The Court: I wonder if you would outline to me the nature and character of the evidence that you expect to produce and perhaps I can give you some better idea of how we should proceed.

Mr. Walker: I don't intend to produce any further evidence, your Honor, until the petition is filed. I had expected to produce today, in addition to the telegram, only the testimony of the consul from San Francisco, who is a lawyer [200] in Yugoslavia. My testimony would be directed toward a continuity in government between the Kingdom of Serbia in 1901 and the present government showing, among other things, that this independent state of Croatia, which was referred to in some of the testimony, was simply a Quisling puppet government that came in with the Germans and went out with the Germans; that during the period when it purported to be an independent state, recognized only by certain of the Cen-

tral Powers but never recognized by the Allied Powers; that during all of that period there was a recognized Yugoslav government in exile in London, which government was recognized by the United States.

The Court: Those are all matters of which the court can take judicial notice and which you can set forth in your briefs.

Mr. Walker: Yes I can set them forth in the brief.

The Court: I do not think they need to be matters upon which evidence needs to be adduced because they can be ascertained as historical facts.

Mr. Walker: Yes. I was offering it simply for assistance to the court.

The Court: So I do not think it would be necessary to put that testimony on. I think it would be preferable, as a matter of fact, if counsel could take the time and support it with such documents as he may find available on that subject. [201]

So if you have no further evidence than that I do not think that that would be particularly appropriate. I will say that it would be more appropriate for counsel to submit that in their briefs.

Mr. Walker: Very well, your Honor. I would be glad to do that.

The Court: Now there is not a petition before me asking to have him enlarge completely and I do not think that I have the power to act or even consider it in connection with this petition, although we have all been giving that matter consideration, and for that reason I think the best thing to do is

to defer the hearing until such time as the amended petition is filed and if, from the petitioner, there is further evidence that you wish to adduce at that time—I do not imagine there will be because the same questions, as I conceive it, will probably be raised by that petition as we have discussed here—and if the petitioner will file that and have it ready for filing at 2:00 o'clock I will defer the hearing until that time and then hear counsel on the matter of whether or not the petitioner should be enlarged on bail pending such time as the petition for the writ may be decided on its merits by this court. So I will continue this matter until 2:00 o'clock.

One question I would like to ask counsel in connection with the research is whether or not Yugoslavia, the government [202] of Yugoslavia or any other government, ever declared war on the United States.

Mr. Walker: Yes, I can answer that. This independent state of Croatia, I am informed, declared war on the United States and I can, if necessary and given enough time, I believe show that the accused here was one of the signers of that declaration of war. I think it was never recognized. The state of Croatia was never given the dignity of recognition by counter-declaration of war by the United States.

The Court: Very well. I will continue the matter until 2:00 o'clock to permit the petitioner to file an amended petition and at that time I will hear arguments on the question of bail, as I have indicated.

Mr. Walker: Thank you.

(Whereupon, at 11:30 o'clock a.m. a recess was taken until 2:00 o'clock p.m. of the same date.) [203]

September 19, 1951; 2:00 o'clock p.m.

The Court: Any ex parte matters?

The Clerk: No, your Honor.

The Court: We have the Artukovic matter and the Roy Rogers vs. Republic Productions matter. Are counsel here?

(Other court matters.)

The Court: I have received a copy of the amended application for writ. The original has been filed, Mr. Clerk?

The Clerk: I have it before me, your Honor.

The Court: It may be filed.

Mr. Walker: A copy has been served upon me.

The Court: And upon the Government?

Mr. Danielson: Yes, your Honor.

Mr. Walker: May I address the court on the question of the amendment?

The Court: Yes.

Mr. Walker: I have no objection of course to the amendment per se, particularly as it is filed at the direction of the court.

However, there is one paragraph in the amended petition to which I would take exception as not a proper amendment, and that is Paragraph IV which sets up as a defense that the matters for which the extradition is sought are political offenses. [204]

I think it is clear, your Honor, that that is a mat-

ter of defense which should be heard in connection with the extradition proceedings themselves, not on this habeas corpus matter.

In the first place, the decisions are plain that even had the record been prepared before the Commissioner on this particular defense that there is no right of review on habeas corpus.

I think it is not a matter which can be initiated in the first instance in a habeas corpus proceeding, and for that reason I would not propose to try the issue here now on habeas corpus.

I think perhaps the court could limit and clarify the issues now if he cared to strike that particular paragraph from the amendment.

The Court: I think under the cases, the few of them that I have had an opportunity to read, at some point along the line the question is subject to review as to whether or not from the record which ultimately comes before the Commissioner and is produced by the demanding government, it can be said that there is no evidence to support a conclusion to the contrary.

Mr. Walker: That is true, your Honor, but it goes only to the——

The Court: But I do not believe on this hearing on the [205] petition for a writ of habeas corpus that the court now has the power to inquire into the question of whether or not the offenses charged are or are not political offenses under the terms of the treaty.

The amendment will be filed. The amended petition for a writ of habeas corpus will be filed and

Paragraph IV will be ordered stricken.

Do you wish to file any return or traverse, or may it be stipulated that the returns heretofore filed may be deemed to be filed to the amended petition?

Mr. O'Connor: So stipulated.

Mr. Walker: That may be stipulated on the part of the demanding government, it being understood that the matter will be submitted on briefs or whatever arrangement is made by the court.

Mr. Danielson: So stipulated by the respondent, your Honor.

The Court: Very well.

Does the petitioner have any further evidence in support of the petition as amended?

Mr. O'Connor: No, your Honor.

The Court: Does the Government?

Mr. Danielson: No, your Honor.

The Court: The demanding government?

Mr. Walker: No, your Honor. [206]

The Court: The question now arises, in the first place, whether or not the court has the power to and, in the second place, whether or not the court should in the exercise of its discretion enlarge the petitioner on bail pending the final decision on the petition for writ of habeas corpus.

Counsel indicated they wanted to be heard on that matter.

Mr. O'Connor: There isn't any objection to that, is there, by the demanding government?

Mr. Walker: To argument?

Mr. O'Connor: I mean being released on bail pending this final hearing on the writ.

Mr. Walker: Oh, certainly. The question, as the court has indicated, is: Has he the power and is it within his discretion?

Mr. O'Connor: Your Honor please, in behalf of the petitioner it is the petitioner's position that this court——

The Court: Let me ask a question. When was the deportation proceedings instituted?

Mr. Reynolds: May I answer, your Honor? In May, May 9, 1951.

The Court: May 9, 1951?

Mr. Reynolds: Yes.

The Court: That was 60 days after the original demand made on March 31st by Yugoslavia to the State Department?

Mr. Reynolds: Yes. [207]

The Court: And when was he released on the immigration bail?

Mr. Reynolds: Either that very same day or the next day, your Honor. I was not in town that day and I am not positive.

The Court: And that bail is $1000.

Mr. Reynolds: $1000.

The Court: Has there been any move to increase the bail?

Mr. Reynolds: Not to the knowledge of counsel for the petitioner, your Honor; also counsel for the petitioner in the immigration proceedings.

The Court: Is the Government aware of any move to increase that bail?

Mr. Danielson: We are not, your Honor.

The Court: Very well.

Mr. O'Connor: Your Honor please, the question of the court's authority to release this defendant on bail, we discussed that on Monday so I don't believe the court cares to go into that any more.

The Court: You rely upon the authorities you cited in your memorandum?

Mr. O'Connor: We rely on the authorities cited and the Gannon case and the Mitchell case, in which the court did release the petition on bail pending and extradition hearing [208] to a foreign country. And it seemed to be the unanimous opinion of all the lawyers, including the Yugoslavian government, that it was clear that the court does have the right to do it, that the court, in deciding whether it exercises that right, makes a surveillance of the surrounding circumstances, and we spent the great portion of the day on Monday and the great portion this morning going into the surrounding circumstances which are now before the court.

So as to the law now and the surrounding facts before the court, the law is clear that there is no case that has ever been presented to this court by either the respondent or the Yugoslavian government which will say that this court doesn't have the right, that no such case has ever been cited and no such case is contained in the memorandum. So that point is very firm.

Now, your Honor please, attached to the amendment to the petition which was just filed today there is a case which I will call the court's attention to because this authority of the United States District Court to release on bail and to bring a person

within the court's own jurisdiction is so well established and so firmly established and goes back to far. not only through the laws of our country but through the origination of the common law and was cited as early as 1871 by the Supreme Court of the United States.

In the case of Barth vs. Clise, going way back to 12 Wall. [209] 400, the Supreme Court in that case —which was an extradition case too—in that case the Supreme Court enlarged upon the wording of a habeas corpus and enlarged upon the fact that the court, the United States District Court or the United States Court, has the full right to a person within its jurisdiction and once that person is within the court's jurisdiction that person is responsible solely to the court and the court is responsible to see that the proper measures are set so as to assure that person's presence in court on the day set.

So, your Honor please, at this time this petitioner here now is within the jurisdiction of this court and he is within the full control of this court. This court now, according to the long established rule, to which there is no contrary opinion of any nature, that this court now has the responsibility of fixing the time that this petitioner is to be in court, and this court is obligated to see that the terms are set such so that his presence in court on those days is fixed.

In view of the fact that there is absolutely no ruling or no decision that would deny this petitioner as a matter of law his release on bail, this court has it in its jurisdiction now to release this defendant on bail to be returned on the date that the extradi-

tion hearing is set, or, second, to return on the date that this court may set itself for a hearing.

The Court: I do not propose to now consider the matter [210] of the enlargement of the defendant on bail conditioned upon his appearance at the extradition hearing; I am only considering his enlargement on bail conditioned upon his appearance in this court in this habeas corpus proceedings.

Mr. O'Connor: Yes. That is the request made in the writ, that he be returned here to this court on a day set by this court, and for that purpose this court does have the authority, this petitioner is within the court's jurisdiction now and this court does have the right to set the date of the hearing on this habeas corpus proceedings and to order the defendant to return on that date.

That authority is set forth in the many cases, but the earliest case establishing the rule is the Supreme Court case which is quoted in the petitioner's memorandum of points and authorities.

The Court: Very well.

Mr. Walker?

Mr. Walker: I take it Mr. Danielson doesn't want to argue?

Mr. Danielson: We have nothing to add, your Honor.

Mr. Walker: I will try to be brief, your Honor, but I want to touch on several different matters.

My position first will be that the court has no power to fix bail in extradition proceedings. I realize that the weight of authority is against me on that. Nevertheless I [211] wish to urge the point.

The point is based on the rule that a treaty comes right under the Constitution in the ladder of authority. A treaty is an international obligation, a binding contract between two sovereign powers. The treaty here expressly provides for the detention of the accused for a period of 60 days, giving to the demanding country that time to prepare and submit the evidence of criminality.

The Court: I do not agree with you that it provides that, for his detention for a period of 60 days. It provides for his detention and then says that if the evidence of criminality is not produced within 60 days he is completely discharged.

Mr. Walker: Yes, but I think it must necessarily be read into it, perhaps your Honor differs from me, that that allows a detention of 60 days.

To get to the cases, there is only one matter——

The Court: Is a man not detained when he is admitted to bail?

Mr. Walker: Possibly so, your Honor. Again that would not be my interpretation.

The only Supreme Court case, at least recently, is Wright vs. Henkel, which is contained in all our authorities.

I think it should be pointed out that in that case bail [212] was denied and the most that can be said for the case is that the court refused to concede that it did not have a discretionary power if it chose. It did not rule that it did; it said, yes, we don't concede that we have the question before us because we are denying bail. But I think some of the language in that case—and, as I say, that is the Su-

preme Court speaking—should set the pattern and rule to be followed by the court on the issue of the exercise of that discretion. And I am passing now from the theory that the court has no power to the use of the power if he has it.

Reading from Wright vs. Hankel, page 62 of 190 U. S.:

"The demanding government, when it has done all that the treaty and law requires it to do, is entitled to the delivery of the accused on the issue of the proper warrant, and the other government is under obligation to make the surrender; an obligation which is might be impossible to fulfill if release on bail were granted. The enforcement of the bond, if forfeited, would hardly meet the international demand; and the regaining of the custody of the accused would be surrounded with serious embarrassment."

There are other cases following that rule announcing it in different words. We have, for instance, the Klein case, cited on page 7 of my memorandum of authorities, in which it [213] states, among other things:

"If, because of the time requisite to get from London proof that is to be offered before the Commissioner, the alleged fugitive were now enlarged on bail, then there should be bail, when asked for, in practically every international extradition case. If such a rule were adopted, not alone would judges exceed the proper limits of their authority as declared by the highest court, but manifestly they would incur grave risk of frustrating the efforts of

the executive branch of the government to fulfill treaty obligations."

Now the reason for the opposition of the demanding government to bail, your Honor, is a very present fear, whether justified or not, that the accused will jump bail and again seek refuge in flight.

As I have stated before, we are 130 miles from the Mexican border and that represents complete safety to him from extradition.

The Court: There is no evidence before me that there is no treaty of extradition in force between Yugoslavia and Mexico.

Mr. Walker: Well, there is no treaty in force by which this accused can be brought here on an extradition proceeding.

The Court: But if they have a treaty with Mexico, or [214] assert to have with the United States, and he seeks asylum in that country they can seek his extradition there.

Mr. Walker: I won't press the point.

The Court: There is no evidence that there is no treaty.

Mr. Walker: Other than to say that he could very easily evade and return here to the extradition proceedings.

Again the McNamara case I think is the best expression of the rule which has been followed in almost all cases, that if the bail—and I don't know how a bond, what sort of a forfeiture bond would be required—but this case says:

"If the bail, however, be so drawn as to cause the money collected on forfeiture to flow to the

demanding government, the situation from an international viewpoint is ridiculous, if not insulting."

There are, as I have indicated, grave international problems represented here to the demanding government. This man is very important. He is wanted as a war criminal. That is perfectly apparent from the correspondence which we have introduced. He is also wanted as a common criminal.

I don't know what bond would satisfy the Yugoslav government as a substitute for the person of this accused. A monetary offering would be—I cannot say it any better than in the words of the McNamara case—not only ridiculous but insulting.

The ambassador of the Yugoslav government is already [215] somewhat exercised by the matter in a wire which I received from him, in which he stated that he was amazed that counsel for Artukovic would be allowed to insult his country. Perhaps of course they do not understand our procedure here. Nevertheless that feeling is already started.

My fear is that even the release on bail of the accused——

The Court: Let me say—he is amazed because his country was insulted by counsel?

Mr. Walker: Some statement to that effect.

The Court: It seems to me as though I have been reading about the United States being insulted in various places, among them Yugoslavia.

Mr. Walker: I can't say as to that.

Next, this is not a trivial offense.

The Court: I wish to make it clear that I am

not trying this as determining it on the weight of the insults.

Mr. Walker: This is not a trivial offense, your Honor. In the two or three cases that I have found where bail has been granted they have been on comparatively minor charges. Here we have not only a capital offense but multiple capital offenses —23 of them. There is a possibility of a defense that these matters are matters of political offenses but, frankly, it seems to me—and I say this with all due respect, your Honor—it seems to me if you should exercise [216] your discretion in granting bail you are simply in a sense betting on a probability that such a defense would be successful.

The Court: I am not considering the matter of granting bail with relation to his appearance before the Commissioner.

M . Walker: Very well, your Honor.

The Court: The only thing I have, and I am giving consideration to, is the matter of granting bail pending the final hearing and determination on the petition for the writ of habeas corpus, and at that time I will then consider the matter of bail before the Commissioner.

Mr. Walker: It seems to me still, your Honor, that you are putting the cart before the horse perhaps in anticipating—I don't accuse you of prejudging it; don't misunderstand me—but would not the court be anticipating a ruling on this amended petition which has just been filed as to the probabilities of success? That should not be a factor.

Or, let me put it this way, that should not be a factor in influencing your discretion.

The Court: Does the court ever do that when they grant bail? When you grant bail in hundreds and thousands of criminal cases, is it because we fix bail that it means that the court has decided that there ought to be a probability of success one way or the other?

Mr. Walker: Not at all, but that is a matter of statutory [217] right there. Here all the adjudicated cases are to the effect that it should be in only very unusual circumstances, and it is not a usual thing.

I say the cases on which bail has been granted have been trivial compared to this. This is a serious charge, and it is a charge which is being prosecuted in good faith by a friendly government. As to the factors or the evidence which has been presented in an effort to get from your Hono. the exercise of this discretionary power, it seems to me it is offset by the seriousness of the charge.

We have here a man restrained, it is true, restrained under my theory for 60 days until the production of evidence, then open to consideration and perhaps the weight of that evidence on subsequent application. We have a man with a family. Certainly I am not without sympathy for his family. I am sympathetic with the family of everyone accused of crime. He has been living on the bounty of his brother during much of that period. I assume that the family will continue to do so. I realize that it is a burden on the brother. I don't think

that his time is going to be spent in supporting his family when he is out on bail, but it will be spent in preparing a defense.

There is evidence that he goes to church. Again I don't discredit the man because he goes to church. It is a fine thing. We all do. Members of the clergy have said that he [218] is a nice person. He is also a person accused of capital offenses.

I am reminded of the comment of Judge Yankwich made at one time in remarking about a recommendation for probation that he received from a banker. He said that anybody could get a good recommendation from a banker, he is a person of high moral character, if he doesn't overdraw his bank account.

Well, this man has gone to church. He has been seen in church. He has had his children christened. That hasn't any particular bearing on his guilt or innocence of the charge of murder.

The Court: Well, in so far as the christening of his children is concerned, I think it was offered for the purpose and considered by the court with relation to the disclosure of his identity.

Mr. Walker: Yes, as to concealment, which is material.

The Court: And not merely that he had his children christened.

Mr. Walker: Yes.

I think that about exhausts my argument, your Honor.

The Court: Very well.

MEMORANDUM OPINION

The Court: I think, as all counsel have agreed,

the rule is probably stated in Wright v Henkel to be that ordinarily bail should not be granted in cases of foreign extradition [219] and that they may do so, if at all only in cases where there are special circumstances.

The decision to be made here is the matter of the judgment of this court and my discretion as to finally whether or not he will appear as ordered by this court.

So far as the special circumstances are concerned, I think that they exist here. I am impressed by the date of the alleged offenses, in 1941, and the fact that Yugoslavia was invaded by Germany on April 6, 1941, and thereafter occupied by Germany until 1945 and that the whole world, and especially that portion of the world, was in a terrible turmoil.

I certainly do not want to have this taken as an indication of any ultimate judgment, but I cannot help but think that it might be possible, if extradition treaties with various countries were carried out to the letter in connection with charges that might be made, they might demand the extradition of every person who was a member of any armed forces against them and charge them with having committed murder, because surely people who are members of armed forces do kill other people, and they kill them just as dead as they would if they privately did it and certainly with as much intention.

Another reason that I think is a special circumstance here, which is existent at this time, is the lack of a direct charge in the complaint which is filed with the Commissioner. It is not a direct

charge that he did commit murder, but says [220] that he is informed that there is a charge made of having murdered or caused to be murdered. I searched the treaty in vain for any offense defined as "causing murders."

However, I do not wish to be understood as finally passing on that, but I indicate it merely as something that has some very slight weight.

Another special circumstance is the fact that while he came to this country under an assumed name, shortly after his arrival and as early as January 1949 he disclosed his true identity to the State Department, also the introduction of the bill in Congress, I think in May of that year, or March 11, 1949, wherein his true identity is disclosed, as well as disclosures made that he came into this country under the name of Anich instead of under his true name. It was well known to the State Department and presumably well known to the Yugoslavian officials.

Since that time and since he has come to California he has lived openly and notoriously under his true name. His wife and his children likewise have lived openly and notoriously under their true names. His children have been attending school under their true names. So there has been no concealment of his identity here and no continued concealment, and there was a revelation of his true identity long before any demand was made, according to the evidence presently before me, for his extradition to Yugoslavia. [221]

Another special circumstance is the fact that on

March 31 of this year a demand was made on the State Department for his return to Yugoslavia as a war criminal, and that it was after that that deportation proceedings were instituted, so that the Government of the United States knew—and I apprehend that it is a fair inference, knowing as much as I know about the operations of the Government—that probably the institution of the deportation proceedings was agitated or commenced at the suggestion of the Yugoslavian government, who then certainly knew that he was in the United States and who he was and where he was.

Another special circumstance of very great significance is the fact that the knowledge of the Government of the United States, and with the knowledge and the presumptive and inferred knowledge of the Yugoslavian government, the demanding government, that he was here, that a bond in the sum of $1000 was fixed to permit his release on bail in the deportation proceedings.

I have seen the defendant on the witness stand. I have had an opportunity to observe him. I called the pastor of his church, not for the purpose of ascertaining whether or not the defendant attended church, but because it seemed to me that if he did attend church and if he did discuss these matters of his life and his conscience with his pastor, that the pastor would be able to have some independent appraisal [222] of his character. From seeing the petitioner on the witness stand, I am impressed with his sincerity and with his honesty and I am of the firm conviction that I do not believe that

the petitioner will fail to respond to an order of this court to return here at any designated date.

Moreover, one additional circumstance, a matter that a person must take into consideration when exercising judgment such as is my responsibility at this time, is the fact that the defendant has a wife and four children here, and another one is probably that this is here, in this country and in this proceeding, his only chance for vindication of what he has conceived to be his efforts to advance his own ideas except in his native land.

I am therefore going to make an order enlarging him on bail. I will now fix the time. How long will you want for briefs?

What I had in mind was that I would require each side to file opening briefs simultaneously and then give each side five days to reply to the other. Can you conclude them in ten days or fifteen days?

Mr. O'Connor: Fifteen days, your Honor.

Mr. Walker: I am trying to add time ahead here so as not to get ahead of this October 22nd date.

The Court: That will be a total of 20 days.

Mr. Walker: As long as it is before October 22nd, it [223] would be entirely satisfactory. Yes, that would make our brief due about the 3rd or 4th of October.

The Court: Each party may have until October 4th at 5:00 o'clock to file simultaneous opening briefs, and each party may thereafter have until October 9th—I think instead of October 4th I will make that date October 1st, Monday, to file simultaneous opening briefs. You will then have until

October 4th—that is three days—to file reply briefs, and the hearing is continued to and set for October 8, Monday, at 10:00 o'clock in the morning.

Now as to the amount of bail. The petitioner suggested $50,000 bail. It seems to me to be a rather large sum in view of the $1000 bail set in the immigration proceedings. However, in view of the fact that it was suggested by petitioner's counsel, I think that that should be the amount of bail.

I will therefore fix the bail of the defendant at $50,000 and I will indicate to counsel that I will not approve a corporate bail in this case. It must either be a private bail qualified before the Commissioner or cash bail deposited by private parties.

Mr. Walker: The conditions of the bail will be the usual ones in a criminal case?

The Court: The conditions will be that the petitioner will return here on October 8, 1951, that he shall not leave [224] the jurisdiction of this court in the meantime, and that after October 8, 1951, he shall thereafter respond to all further orders of the court which may be made in or about or in connection with these proceedings.

The condition of the bail will provide that it shall be forfeited to the respondent, the United States of America, or James J. Boyle, United States Marshal, as the appropriate official of the United States.

Mr. Walker: Very well.

Mr. Danielson: Your Honor please, I have in court as yet the Immigration and Naturalization

file. Both parties have indicated to me that they need nothing from it.

The Court: It may be returned, counsel. Thank you for producing it.

Mr. Danielson: Thank you.

Mr. Reynolds: If your Honor please, I think counsel is under order to give photostats of the Irish passport.

The Court: You may file them.

I will also state, counsel, in connection with some original birth certificates or records produced this morning, that if either party desires to withdraw any original exhibits they may do so upon substituting a photostatic copy, which can be done through the medium of the clerk.

Mr. Walker: I was thinking, your Honor, I have one telegram about ten lines long. It would be much simpler to [225] make a copy, if counsel would agree to such a course, rather than to photostat it.

The Court: Do you have copies of your file?

Mr. Walker: Copies have been served for the long ones but there is a one-page telegram referring to the treaty.

The Court: Very well.

Mr. Walker: Mr. Reynolds, will you consent to my withdrawing that one-page telegram and substituting a typewritten copy?

Mr. Reynolds: Yes.

The Court: Very well. I will have a short recess before proceeding with the Rogers matter.

(Whereupon, at 2:50 o'clock p.m., the above-entitled matter was continued until 10:00 o'clock a.m., Monday, October 8, 1951.) [226]

October 8, 1951; 10:00 o'clock a.m.

(Other court matters.)

The Clerk: No. 13467, Andrija Artukovic v James J. Boyle.

Mr. O'Connor: Ready.

Mr. Danielson: Ready for the respondent.

Mr. Walker: Ready.

Mr. O'Connor: Your Honor please, in this case one witness, who doesn't speak the English language, we would need to have a French interpreter for and possibly by the time we get an interpreter here the court might take that into consideration for the time to set it down.

The Court: Is it your anticipation to offer furthur evidence on the hearing this morning?

Mr. O'Connor: Yes.

The Court: Both sides?

Mr. Walker: I have two instruments, your Honor, consisting of certificates by the Secretary of State and by the Yugoslav ambassador as to the present effectiveness of the treaty. My evidence is purely documentary.

The Court: Very well.

Mr. Danielson: The respondent has no evidence to offer.

The Court: How long do you expect you will take, Mr. O'Connor? [231]

Mr. O'Connor: Your Honor please, our state-

ment is in two parts. One part of our presentation is devoted to the fact that there is no treaty in existence; the second part that we would like to address the court on——

The Court: You mean you are producing expert testimony to that effect?

Mr. O'Connor: There will only be evidence and expert testimony just on the one phase, and that pertains to the treaty. As to that phase there will be this expert, and there are no documents to introduce, just the expert testimony.

Then on the second part of our request to address the court, it will be pertaining to the defects in the complaint.

The Court: That will be argument on the law?

Mr. O'Connor: That will be argument on the law; yes.

The Court: Then your evidence will be very short?

Mr. O'Connor: Yes, it will.

The Court: And likewise yours?

Mr. Walker: Mine will not take over probably a minute.

On the question that Mr. O'Connor raises, as to the sufficiency of the complaint, your Honor, I think it only fair to state now that I do presently intend to amend the complaint. I have received the evidentiary matter from the Yugoslav government. It is now in my possession. I have not yet had time to thoroughly analyze it. It is quite bulky. I intend to [232] and shall amend my complaint and I think such amendment will reach all of the objections

covered by counsel for Artukovic. I say that without admitting that there are any defects in my present complaint, your Honor.

The Court: When do you think you will have that amendment ready?

Mr. Walker: I think I can do it within a week. I believe it will require that time to properly analyze the mass of evidentiary material which is before me.

The Court: This hearing is set before the Commissioner when?

Mr. Walker: On the 22nd, your Honor.

The Court: On the 22nd?

Mr. Walker: Yes.

The Court: And the 60 days are up when?

Mr. Walker: On the 29th.

The Court: Well, I would like to have your complaint in amended form before me before I pass on the questions of law that have been raised because if they are eliminated I cannot assume—I do not mean to me discourteous, counsel, but I cannot assume that your new complaint will have any less alleged defects than the present one.

Mr. Walker: Of course not, except I now have the information which will enable me to supply the defects of particularity, and so forth, which are raised. [233]

In connection with the volume of work involved, the accusation, which is the indictment there—well.

here it is—it is three-quarters of an inch thick, and I have 81 depositions to go through.

The Court: Are they translated?

Mr. Walker: Yes, there are translations for everything.

I am not urging delay but I simply want to indicate that it is quite a task to prepare the amended complaint. And, incidentally, that will charge many, many other offenses.

The Court: Well, what do you suggest, that I proceed this morning and confine the questions of law to the question of whether or not there is a treaty in existence and defer the other—I will have to pass on it, and I will have to pass on it in sufficient time so that the Commissioner can proceed with his hearing on the date set in the event I do not grant the writ.

Mr. O'Connor: That would seem to meet with the situation, if we reserve any argument on the law until after he has amended his complaint, and then at the court's convenience set down or carry on the hearing on the law as to the status of the treaty and reserve the law until after he has amended his complaint.

Mr. Walker: I am trying to screw up my courage to say that I will have this amended complaint ready by Friday. I am quite sure I can have it by Monday, but the volume of [234] work is such that I dislike to be bound to having it ready on Friday.

The Court: Well, on the other hand, after it is filed, counsel are entitled to an opportunity to

examine it for any defects which they think might exist in it.

Mr. Walker: Well, your Honor, I think perhaps there is a point in all of our minds which really doesn't exist. True, I must present the evidence to the Commissioner on the 22nd under his present ruling. I have the evidence here and ready and will be able to present it, which is simply the physical task of handing it to the Commissioner. I would anticipate that he would certainly, on counsel's request and probably of his own motion, want further hearings, hearings as to the sufficiency of the evidence, probably extensive briefing, and I would anticipate further that counsel would want to introduce probably oral evidence there or documentary evidence on the question of whether these offenses are or are not political in nature so that I think the filing of the material with the Commissioner would meet the jurisdictional requirements and would not preclude the matter from going on over a rather extended period of hearings before the Commissioner.

The Court: Very well. We will proceed this morning on the one question if counsel will limit themselves to whether or not the treaty is or is not in existence, and any other [235] questions concerning it which counsel deem necessary to urge.

By the way, do you know where to get your French interpreter?

Mr. O'Connor: We will take this time to try and get one, your Honor.

Mr. Reynolds: We can possibly get one through

the Immigration and Naturalization Service. They have a corps of interpreters that they use from time to time.

The Court: Very well.

Mr. Walker: I believe Mr. Smith, the clerk, has a list of approved interpreters. Maybe they can get one through him.

The Court: Very well. Somebody find an interpreter.

(Other court matters.)

The Court: Counsel, it is 20 minutes to 12:00 and I doubt if we can get into the Artukovic matter at all this morning.

Mr. Walker: Mr. O'Connor informed me that the interpreter would not be here until 2:00 o'clock, but if necessary and if there was time it could be used in argument. If the other case is going to last until 10:00 o'clock, maybe we had better wait.

The Court: I understand it will last 10 or 15 minutes.

Can we finish after 2:00 o'clock this afternoon? I will have to take a recess this afternoon to attend the judges' [236] meeting for a little while, so I think it would save everybody time if I continued the Artukovic matter until 2:00 o'clock today.

Mr. Walker: What is the time of the judges' meeting?

The Court: Around 3:00 o'clock.

Mr. Walker: Unless this testimony is prolonged, I see no reason why we cannot conclude this by that time.

The Court: Very well.

(Whereupon, at 11:40 o'clock a.m., a recess was taken until 2:00 o'clock p.m. of the same date.) [237]

October 8, 1951; 2:00 o'clock p.m.

(Other court matters.)

The Court: United States v. Artukovic.

Mr. O'Connor: Ready.

Mr. Danielson: Ready for the respondent.

Mr. Walker: Ready.

I don't know who has the laboring oar at the moment, your Honor. If further evidence is to be taken or produced on the part of the accused, I thought it might be helpful to the court if I could introduce the two instruments which I mentioned earlier so that they would be before the court during the progress of the examination.

The Court: Well, it is an order to show cause why the writ should not issue, so I suppose it is up to whoever is resisting the order to show cause to make the next move.

Mr. Walker: I have first two State Department bulletins. The material set out in these bulletins, your Honor, is set out in my brief and I think also in the brief filed on behalf of the United States Attorney, but I thought it might be of interest to the court to hand up the bulletin.

The Court: Very well. They will be marked for identification.

Mr. Walker: The page is noted in pencil on the front.

The Clerk: DG-C and DG-D. [238]

(The documents referred to were marked Demanding Government's Exhibits DG-C and DG-D respectively for identification.)

(Exhibiting document to counsel.)

Mr. Walker: I don't know that those bulletins need to go into evidence. They can if the court desires it.

The Court: They can remain marked for identification. They are a convenient form of reference.

Mr. Walker: Yes.

I have shown to counsel, and will hand to the court as the demanding government's exhibit next in order, first a certificate under the seal of the United States by the Department of State, to which certificate is attached the treaty in question here, that is, the treaty between the United States and Servia covering extradition.

The certificate speaks for itself, but for identification it identifies the treaty which is attached and states that all of the provisions of said treaty, which entered into force between the United States of America and the Kingdom of Servia on June 12, 1902, continued in force and were applicable to the whole territory of the Kingdom of the Serbs, Croats, and Slovenes, as constituted on December 1, 1918, and to the Kingdom of Yugoslavia, to which the name of the Kingdom was changed by a law of October 3, 1929; and further that all of the provisions of said treaty continued in force and became applicable to the Federal People's Republic of [239] Yugoslavia as proclaimed on November 29, 1945 and are pres-

ently in force between the United States of America and the Federal People's Republic of Yugoslavia.

The Clerk: DG-E.

(The document referred to was marked Demanding Government's Exhibit DG-E for identification.)

Mr. Walker: The second document is signed by V. Popovic, under the seal of the Yugoslav government and states, in effect, that this same treaty is presently in force between the United States and the Yugoslav government.

The Clerk: DG-F.

(The document referred to was marked Demanding Government's Exhibit DG-F for identification.)

The Court: That is a certificate of the Yugoslavian government?

Mr. Walker: Yes, your Honor.

Now, your Honor, it is the position of the demanding government at this time that this decision as to the force and effect of the existing treaty is a political and not a legal question. That is borne out by several cases. Two of these cases I give to the court as they are not included in my brief. They are decisions of other judges on this bench, that is, the District Court of this district.

One in—I won't attempt to pronounce these; I will just spell them—U-y-e-n-o v. Acheson, 96 F. Supp. 510 at [240] page 515 particularly.

The second one is K-u-w-a-h-a-r-a v. Acheson, 96 F. Supp. at page 38.

Also I am told by Mr. Danielson there is a third case—I have not had an opportunity to read it—but a decision by the appellate court for this Circuit in the last Advance Sheet which I believe, I am told, is on the same point.

The Court: Reversing me.

Mr. Walker: I believe so.

The Court: A case in Seattle.

Mr. Walker: I haven't read the decision. I merely cite it to you.

The principle is borne out in the case of Terlinden v Ames, 184 U. S. at page 270——

The Court: That is cited in your brief.

Mr. Walker: Yes. And if I may read from the headnote:

"The question whether power remains in a foreign State to carry out its treaty obligations is in its nature political, and it is not within the province of the courts to interfere with the conclusions of the political department in that regard."

In the case itself, which is a long case and I will not attempt to read it at length, but the court states that the real question was the denial of the existence of a treaty of [241] extradition between the United States and the Kingdom of Prussia, or the German Empire, the contention being that the treaty had been terminated by operation of law.

At page 289, at the top of the page, the court states:

"And it would be impossible for the executive department of the government to conduct our foreign relations with any advantage to the country,

and fulfill the duties which the Constitution has imposed upon it, if every court in the country was authorized to inquire and decide whether the person who ratified the treaty on behalf of a foreign nation had the power, by its constitution and laws, to make the engagements into which he entered." Reading now from page 290, the closing paragraph:

"The decision of the Executive Department in matters of extradition, within its own sphere, and in accordance with the Constitution, are not open to judicial revision, and it results that where proceedings for extradition, regularly and constitutionally taken under the Acts of Congress, are pending, they cannot be put an end to by writs of habeas corpus."

I think my written argument, your Honor, includes all of the other points that I want to raise at this time.

There was some colloquy this morning when the case perhaps was not officially before your Honor as to my intention to amend the complaint. If that appears in the record, then there is no need for me to repeat it at this time.

The Reporter: Yes, it does, Mr. Walker.

The Court: That will be in the record, I take it, if it is written up——

Mr. Walker: Yes.

The Court: ——continuing it until this afternoon, as well as the other statements made?

Mr. Walker: Yes.

The Court: The Government has nothing to offer?

Mr. Danielson: I have nothing additional to offer, your Honor. I just wish to point out one correc-

tion, if I may. At line 20 of page 3 of the memorandum that the respondent filed I should like to point out that the word "words" should be changed to "existence."

The Court: What is that line?

Mr. Danielson: Line 20, page 3, the third from the last word should be "existence." I have called that to the attention of counsel.

The Court: Very well.

Mr. Danielson: I would also like to point out that the cases of Kuwahara v Acheson and Uyeno v Acheson, which Mr. Walker referred to, likewise are being called to the attention of counsel for the petitioner. [243]

The Court: Very well.

Mr. Walker: Mr. Danielson, do you have the citation of the other case to which I referred in the current Advance Sheet?

Mr. Danielson: I have.

If your Honor please, the case of Acheson v Kuniyuki, reported at 189 F. (2d) 741.

The Court: Very well.

Mr. Reynolds: Your Honor, before we touch upon the meat of this question, we would like to ask the court whether an order of this court is still effective. On the first day of the hearings in this matter the court ordered Mr. Walker, the attorney for the Yugoslav government, to produce a copy of the note of March 31, 1951. I refer to the record on page 47 beginning at line 13, and the record on page——

The Court: Was that not produced? I thought that was the telegram.

Mr. Walker: That was the telegram which I read into the record.

Mr. Reynolds: Yes, your Honor, but your Honor asked that the note be obtained in the meantime and specifically said on page 56:

"I am letting you proceed at this time, Mr. Walker, on the distinct understanding that the document called for will be produced. If it is [244] not produced I think probably the only effective means of this court exercising its power is not to permit your client to appear as a party to this action until they do."

The Court: I thought the document had been produced.

Mr. Reynolds: Not the copy, your Honor, which Mr. Walker had the impression from his client was being placed in the mail that very day. In fact, on page 57 Mr. Walker said:

"I can only say, your Honor, that I was advised about 1:00 o'clock that it would be put in the mail immediately."

Now he may have that document. All I ask is, is the order of the court still effective to cause its production of that document because it does differ from the contents of the telegram. The telegram itself referred to enclosures of the note, which are a part of the note, which were not set forth in the telegram, your Honor.

The Court: Yes, most assuredly. I was under the impression that the order had been complied with.

Mr. Reynolds: Yes, your Honor.

Mr. Walker: I have a copy, if I may have a mo-

ment to find it. I thought it was covered by the telegram and I didn't pay any more attention to it.

Mr. Reynolds: If your Honor will permit me, then while [245] Mr. Walker is searching for his copy of the note——

The Court: You had better wait because maybe he cannot do two things at once.

Mr. Reynolds: Yes, sir.

Mr. Walker: I will hand to the clerk the copy which was forwarded to me, that is, this letter.

The Court: Let counsel inspect it.

The Clerk: Shall I mark it?

The Court: Yes.

The Clerk: DG-G.

(The document referred to was marked Demanding Government's Exhibit DG-G for identification.)

Mr. Walker: That is the letter of March 31.

The Court: That refers to the notes of his predecessor of July 23, 1946. I think that is what counsel Mr. Reynolds, was interested in.

Mr. Reynolds: Yes, sir, I am. I intend to ask the court, as soon as I read this, to order the Yugoslav government to produce this note also.

The Court: Very well.

Mr. Reynolds: The first thing I note, your Honor, is that it refers to enclosures which are certainly very important in this case which are not in this note, your Honor.

The Court: What enclosures?

Mr. Reynolds: You do not have the note. It says:

"This will be seen from the enclosed 'Decision on the Ascertainment of Crimes of Invader and Its Helpers,' " and gives a citation to the Federal State of Croatia Land Commission for the Ascertainment of Crimes of Invader and Its Helpers of December 1, 1945, confirmed by the State Commission of Yugoslavia.

I don't think there is any question but that that is a very important part of this note for the Yugoslav government would not have presented it to our Government.

The Court: Yes, I think you are entitled to have the whole note.

Mr. Reynolds: Yes, your Honor.

Mr. Walker: Your Honor, I have no objection at all to producing any documents which the court desires. The Yugoslav government is proceeding in the utmost good faith in this matter. Nevertheless I cannot see where this pertains to any issue presently before the court which, as I understand it, the issues go only to the validity of the treaty and the sufficiency of the complaint.

As to any motives behind this, that is, whether this is sought as an extradition for political offenses, I take it that is what counsel is driving at.

The Court: No, the court is not hearing that on the merits. However, in the event that I should conclude that the writ of habeas corpus should not be granted I then must determine whether or not the plaintiff should be enlarged upon bail pending this hearing before the Commissioner.

Mr. Walker: As to that issue, I have no objection to producing it, but it will take me some time.

The Court: This is material in respect of that issue. It is not material, as I see it, in respect of the law issue, the validity of the treaty, unless there is some declaration in the note which denounces the treaty.

Mr. Walker: It is admitted that the demanding government sought and would like to extradite this man as a war criminal under the provisions of this United Nations Assembly resolution which has never been codified or adopted by our legislature.

That still has, assuming that that is true, no bearing, as I see it, with all due respect to the court, upon the release on bail or the assertion of a further right on the part of the demanding government to extradite the accused here as a common criminal. It is an issue which must come before the Commissioner.

The Court: It must ultimately come before the Commissioner, but it is one of the factors that this court must take into consideration in determining whether or not he should be enlarged upon bail, and I think counsel is entitled to have it.

Mr. Walker: In spite of my statement that the demanding government admits that they would like to, they much prefer [248] to extradite him as a war criminal?

The Court: Yes, in spite of your statement.

Mr. Walker: I would be glad to get it. It may take me a little time to get it.

The Court: What is "a little time"?

Mr. Walker: Well, I can get a telegram off tonight

and counsel apparently isn't satisfied with a telegraphic response. It refers to certain enclosures. I don't know the length of them. It may take me two or three days.

The Court: Let me see the document.

(The document referred to was passed to the court.)

The Court: Now you have produced the note of July 23, 1946?

Mr. Reynolds: No, he has not. That has not been requested. That had not been requested because we had never seen the note of March 31, 1951.

Th Court: You saw this telegram which referred to it?

Mr. Reynolds: Yes, your Honor.

Mr. Walker: I produced, as I recall, four notes: One was the original request, which you just have, dated March 31, 1951 from the Yugoslav Embassy to our Department of State requesting his extradition as a war criminal.

The second was a letter from our State Department to the Yugoslav Embassy. I believe that was dated March 14—you can correct me in this, Mr. Reynolds—is that the note [249] which you had, May 14?

Mr. Reynolds: The note I had was May 14. The first reply of the State Department.

Mr. Walker: That was the first reply.

Then there was a second reply of May 21, in which they said they had not intended to imply that they could not proceed with this extradition proceedings.

Then there was a fourth one, I believe the day fol-

lowing the arrest—it should have been August 30th—advising the State Department——

The Court: This note refers only to two documents, one to the predecessor of July 23, 1946, No. 1034, and what is referred to as the enclosed Decision on the Ascertainment of Crimes of the Invader and Its Helpers.

Do you have a copy of that?

Mr. Walker: No, I don't. That was my copy. If I may refer to it?

(The document referred to was passed to counsel.)

Mr. Walker: If we may confer just a moment and if Mr. Reynolds will point out exactly what he wants.

(Conference between counsel.)

The Court: And do you want the letter of July 23, 1946 referred to in the first part of that?

Mr. Reynolds: Yes, your Honor.

While the attorney is conferring, I wonder if I could [250] ask the court reporter to advert to the first response of the attorney for the Yugoslav government to my request for this document. Would it be possible for the court reporter to find that?

The Court: You mean when he started his statement?

Mr. Reynolds: I just want one sentence, the very opening sentence.

The Court: You mean today?

Mr. Reynolds: Yes, your Honor. If it is too difficult I will withdraw the request. I believe I remember what was said but I don't want to be accused of

trying to quote what he said and then find that it is different.

The Court: This is an uncertified copy.

Mr. Walker: That is right, your Honor.

Mr. Reynolds: I want to withdraw the request of the court reporter because I am certain of it. The Yugoslav counsel spoke again of the good faith of the Yugoslav government in this proceeding. In that connection may I have the document that was just offered into evidence?

(The document referred to was passed to counsel.)

Mr. Reynolds: Now, your Honor will recollect very clearly that the attorney for the Yugoslavs spoke consistently of the fact that this man was hiding in the United States and that we devoted a great deal of time and testimony to proving that he was not hiding in the United States. Yet, [251] your Honor, the Yugoslav government has not been in good faith with its own attorney or the time of this court would not have been wasted because let us read what this note says:

"According to latest available information the present whereabouts of the mentioned war criminal is in Los Angeles, California, U. S. A., where he is employed with the road construction enterprise 'P. & I. Artukovic Co., Inc.' 13305 San Pedro Street or 'General Contractors,' 1335 South Avalon Avenue, both in Los Angeles, California. In addition, his private address is 62 Surfside Colony, Long Beach, California. Living in Los Angeles, unhidden, under

his true name, Dr. Artukovic, in the capacity of employee of the said companies, signs checks by his full name."

Your Honor, if the Yugoslav government had made this note available to its own attorney he would not have wasted the time of this court in arguing that the man was in hiding and I maintain, your Honor——

The Court: That is past.

Mr. Reynolds: Yes, your Honor.

The Court: I have held that he was not in hiding.

Mr. Reynolds: I know, but I am challenging the good faith that he keeps repeating, that the Yugoslav government is bringing these proceedings in. That was his initial [252] statement in response to my question about the order.

Mr. Walker: Your Honor, the Yugoslav government is not on trial here. I am informed that that information became available to them only a few days before. I think it appeared in Drew Pearson's column, or something of that sort, and that is where this matter, I am told, originated. This note was dated in March '31.

The Court: Let us get on with the evidence.

Mr. Reynolds: Yes, sir.

The Court: If you have any.

Mr. Reynolds: Yes, your Honor.

The Court: And if not, we will get on with the argument.

Mr. Reynolds: Your Honor, we are dividing our attack on the treaty into two sections; one on the continued existence of the treaty through the affairs

or the circumstances which occurred in 1919, and the second whether the treaty survived the acts of the Yugoslav government of Tito in 1945 and 1946.

In arguing the first portion of this we will not present any witnesses, your Honor. We will rely upon the record as it is made by the briefs and prior decisions of the Federal Courts of the United States.

In attacking the treaty in the second instance we will present one witness, your Honor. [253]

The Court: In endeavoring to follow the continuity of the treaty from 1902 through the period after the first World War I did not notice any particular section of your brief—I have not had an opportunity to examine it as thoroughly as I would like—which dealt with that.

Mr. Reynolds: Yes. I believe our brief did deal with that. And at that time we had the impression that we were precluded from opening the question of the continuation of the treaty through the creation of the State of the Serbs, Croats and Slovenes by the decision of the Supreme Court in Terlinden v Ames. But since writing the first brief we have examined the question again very carefully, particularly in light of the treaty of Saint Germain, which was participated in by the United States but not ratified.

Now, we found that there is a distinction between the case of Terlinden v Ames and the present case, your Honor.

The Court: Have you been able to secure a copy of the treaty of Saint Germain?

Mr. Reynolds: Yes, your Honor. The Govern-

ment was kind enough to put the pertinent parts of that treaty in the record.

The Court: Attached to the Government's brief?

Mr. Reynolds: Attached to the Government's brief, your Honor. That is Appendix A, your Honor, page 1 of the Government's brief. [254]

The Court: That is the treaty of September 10, 1919, and you are content to rely upon the quoted portions in the Government's brief without the full text?

Mr. Reynolds: I am, your Honor.

The Court: Very well.

Mr. Reynolds: Now, your Honor, I would like to draw attention to the occurrences in the two cases of Terlinden v Ames, 184 U. S. 270, and the instant case.

In the case of Terlinden v Ames there were treaties of extradition entered into between the United States and Prussia and a number of other states, German states, which had then formed no union. Thereafter they did form a union, the North German Union under the praesidium of the Crown of Prussia, and therefore on February 22, 1868 a treaty relative to naturalization was entered into between the United States and this new union which, by a paragraph of it, reading:

"The convention for the mutual delivery of criminals, fugitives from justice, in certain cases, concluded between the United States on the one part and Prussia and other States of Germany on the other part, on the 16th day of June, 1852, is hereby extended to all the States of the North German Confederation."

Now, your Honor, I maintain that that treaty in the situation that existed in the creation of the German Union, which [255] later became the German Empire, but was the same treaty thereafter is exactly the same situation that existed when the State of the Serbs, Croats and Slovenes was formed.

In other words, Servia and Croatia entered into this State, as well as Slavonia, on equal basis, and a new state was formed, and the United States, attempting to follow the same procedure that it had followed in the creation of the North German Union, signed a treaty, together with other powers, which specifically applied, the Treaty of Serbia, to the entire State of the Serbs, Croats and Slovenes.

But, your Honor, this distinction immediately becomes apparent: The treaty of 1919 was never ratified by our Government, your Honor, as prescribed by our Constitution, whereas the treaty of 1868 was ratified. Then, your Honor, and thereafter the State Department, in an effort to cure that, engaged in what you might call a one-sided series of notes, because the State Department did not address its first notes to the Kingdom of the Serbs, Croats and Slovenes or the State of the Serbs, Croats and Slovenes, but addressed its first note to a law firm, as I understand it. That was the note of June 1921, in which it is said that it is the opinion of the Department that the treaty applies to the whole territory of the Serbs, Croats and Slovenes.

But, your Honor, the Government of the United States, or rather the United States, as provided by the Constitution [256] of the United States, had not

ratified that and, in effect, when it did not ratify it then only Servia was governed by that treaty between Servia and the United States and the State of the Croats and the State of the Slovenes was governed by the treaty of extradition entered into between the United States and Austria in 1848.

The Court: You mean there is another extradition treaty that is not before us?

Mr. Reynolds: There is another extradition treaty which could be brought into play in these proceedings, your Honor.

The Court: Is it in force?

Mr. Reynolds: It has never been followed, the Department of State of the United States having taken the position that the treaty was applicable to the whole territory, despite the refusal of the Congress to enact the treaty which would have made it so. Nobody has even attempted to request any extradition from any part of Yugoslavia, Croatia or Slavonia under the treaty in effect between the United States and Austria-Hungary of 1848.

Now, your Honor, we realize that the decision in Terlinden v Ames is a milestone which would seem to preclude an investigation of this sort, but we point out that there are some very distinct differences in those cases. In fact, the German government went so far in responding to the United States in an inquiry as to what extradition proceedings [257] would be followed by Germany to say as foliows (this is from Terlinden v Ames, page 285):

"In 1889, in response to a request for information on international extradition as practiced by the Ger-

man government, the Imperial Foreign Office transmitted to our charge at Berlin a memorial on the subject, in the note accompanying which it was said: 'The questions referred to, insofar as they could not be uniformly answered for all of the confederated German States, have been answered in that document as relating to the case of applications for extradition addressed to the Empire or Prussia.' It was stated in the memorial, among other things:

"'Insofar as by laws and treaties of the Empire relating to the extradition of criminals, provisions which bind all the States of the Union have not been made, those States are not hindered from independently regulating extradition by agreements with foreign States, or by laws enacted for their own territory.'"

Now, your Honor, we maintain that the law of Austria-Hungary, the extradition law of Austria-Hungary was enacted for the territory of the Croats and Slovenes and by the failure of the United States to ratify the treaty of Saint Germain, [258] the law of Servia could not properly be applied to Croatia and Slavonia.

Now, your Honor, if you will permit I will turn to the question of—we put this in the alternative because if your Honor finds that the treaty did survive, the creation of the Serbs, Croats and Slovenes—we wish your Honor to consider the question whether the site has survived the legislative action of the present Communist government of Yugoslavia.

The Court: The Austrian treaty was what date?

Mr. Reynolds: 1848, your Honor. I believe your

Honor may take cognizance of the fact, or judicial notice, that the government of Yugoslavia, as early as February of 1945, rested in the power of Tito and his Communist forces. They were there in force. They had set up their legislative assembly, which they called the Abnoj, A-b-n-o-j, and they had already warned the royal Yugoslav government in exile that they would not permit the king to return.

Furthermore, on February 3, 1945, the Yugoslav government, which was then the Federal People's Republic of Yugoslavia, or so it called itself, issued a proclamation that all laws of Yugoslavia enacted prior to April 6, 1941, or in effect prior to April 6, 1941, were of no effect.

Thereafter, your Honor, they completely changed their form of government, they destroyed the monarchy and set up the People's Federal Republic of Yugoslavia on December 1, [259] 1945, and on December 10, 1945, they requested recognition of this country.

Now, your Honor, I divert from the point just a moment.

I don't believe anyone will maintain that our country cannot recognize another country without saying that the treaties are in effect. In the cases which were called to your Honor's attention as occurring in this Circuit just before counsel began speaking, they relate solely to the right of the State Department to recognize the existence of a foreign state.

The Court: I am very familiar with those questions and those cases, counsel.

Mr. Reynolds: Yes, your Honor. I don't intend to go any further into it.

The Court: Very well.

Mr. Reynolds: On December 22, 1945, the State Department of the United States acknowledged the changes in the Yugoslav government and advised the Yugoslav government that it would expect assurances and the Yugoslav government would accept the international obligations of prior governments and be disposed to confirm the continued existence of treaties between Yugoslavia and the predecessor governments, which was the government of Servia and the government of Serbs, Croats and Slovenes. In other words, the United States insisted through its State Department on the continuity which we have challenged." [260]

Now, your Honor, the Yugoslav government took over three months to respond to that note, and when they responded to that note, your Honor, they limited themselves to a mere acceptance of their international obligations. They did not, as is customary in diplomatic procedure, repeat the request and confirm it. And, your Honor, I ask that the court take notice of a government publication, "Treaties and Other International Acts," numbered 1801 to 1850, particularly to the series numbered 1803 therein, which bears upon both the points that I am making.

At page 7 of Series 1803 therein the Secretary of State to the Yugoslav ambassador:

"The Secretary of State presents his compliments to His Excellency, the Ambassador of the Federal People's Republic of Yugoslavia and has the honor

to inform the Ambassador that the United States Government understands from the Embassy's communication No. Pov. Br. 407 of April 2, 1946, that the Government of the Federal People's Republic of Yugoslavia recognizes among its other international obligations the dollar bonds issued or guaranteed by predecessor Yugoslav governments; and inquires whether the Ambassador would confirm this interpretation." [261]

Now, your Honor, I hate to be repetitious, but I want to draw to the court's attention how carefully the Yugoslav government quotes its prior language of that note in responding.

"The Ambassador of the Federal People's Republic of Yugoslavia presents his compliments to the Honorable the Secretary of State and has the honor to acknowledge the note of July 19, 1948, from the Secretary of State in which it was stated that the United States Government understands from this Embassy's communication No. Pov. Br. 407 of April 2, 1946, that the Government of the Federal People's Republic of Yugoslavia recognizes among its other international obligations the dollar bonds issued or guaranteed by predecessor Yugoslav governments.

"In his note of July 19, 1948, the Secretary of State inquires whether the Ambassador would confirm this interpretation."

They have repeated practically identically every word of the prior note.

Then they go on to say:

"The Ambassador of the Federal People's Republic of Yugoslavia confirms the interpretation of

the United States Government of this Embassy's communication No. Pov. Br. 407 of April 2, 1946, and states that his government will consider means of [262] discharging such obligations when Yugoslavia's economic condition, seriously injured by the ravages of war, and her foreign exchange position permit."

Now, your Honor, I am not going to burden this record by reading the third series of these notes but your Honor can see it by an easy reference. The Secretary of State, in responding to the Yugoslav note, quotes the Yugoslav note in its entirety and says:

"The Secretary of State has taken due note of the foregoing note of July 19, 1948, from the Ambassador of the Federal People's Republic of Yugoslavia."

This series of notes brings out two things, your Honor, that it is customary in diplomatic procedure to be exact and to respond exactly as you are requested to respond so there will be no misunderstanding five years later, such as is presently occurring here and, secondly, this exchange of notes shows that international obligations include things beyond treaties, dollar bonds specifically in this case.

And while we are on the point of international obligations, your Honor, counsel has researched all definitions that he can find in Corpus Juris, in Words and Phrases, and in other encyclopedias of law and has found no definition of "international obligations" defining them as treaties. I [263] believe your Honor, that an international obligation might arise

under a treaty, but international obligations arise in many ways. And that was the reason that the Government of the United States through its State Department asked for the specific confirmation of the continued existence of the treaties.

The Court: But after the reply from the Yugoslavian government, did not the Secretary of State say that he was pleased to see that they recognized the treaties?

Mr. Reynolds: Yes, your Honor, but where is the language by which they do? And what I ask this court is, can the United States Government, through its State Department, place in the mouths of other governments words which they did not say? That is the question which I present to this court. And, your Honor, I argue that on the basis of the decree of February 3, 1945 and the law of October 25, 1946, which is appended to our brief, it is perfectly clear——

The Court: Is your decree of February 3, 1945 appended?

Mr. Reynolds: No, your Honor, it is not, and the reason for it is this: That decree was only available in the Library of Congress. At that time the Library of Congress had not officially translated that decree. It is in the process of doing so now.

The Court: How can I know what is in it then?

Mr. Reynolds: The only way you can tell what is in it, [264] your Honor, is by reference to the law of October 25, 1946, which affirmed, and by the very language of it, incorporated the decree of February 3, 1945 therein.

The Court: This Exhibit 1 which you have attached to your brief, and which you describe, I suppose interpreted, as "edict," says "Pursuant to Article 74, Subsection 6 and Article 136 of the Constitution, etc." What constitution?

Mr. Reynolds: Your Honor, that refers to the constitution of the Federal People's Republic of Yugoslavia, which I understand was signed on January 31, 1946 at Belgrade and proclaimed on February 1, 1946 at Belgrade, and I have here an interpretation in English distributed by the Information Officer of the Embassy of the Federal People's Republic of Yugoslavia, Washington, D. C. And if we have no objection from the counsel for the Yugoslav government, I would like to offer this.

The Court: I should think they would not object. It is their own interpretation.

Mr. Walker: I should like to see it.

Mr. Reynolds: You haven't seen this either?

(The document referred to was passed to counsel.)

The Court: When will this decree of February 3, 1945 be available?

Mr. Reynolds: Your Honor, I cannot answer that because I will explain that there is a project sponsored by Free [265] Europe, Inc., presently engaged under the supervision of the Library of Congress at Washington, D. C., in translating great sections of foreign law. They have working on this work two Yugoslav attorneys or, I should say, former Yugoslav attorneys, and it was through their kind help

that I obtained what information I have, because I am unable to read Serbian, or Croatian myself.

What I maintain, your Honor, going on with my argument, is that the important act is the one which is translated and a photostatic copy of which law I will offer in evidence when I present my witness. The law is No. 506 of October 25, 1946, because that is the official act of the present government of Yugoslavia.

The Court: And that was before they were recognized?

Mr. Reynolds: No, sir.

The Court: That was after they were recognized?

Mr. Reynolds: After they were recognized. And it repeated the proclamation of February 3, 1945, that the provisions of law in effect prior to April 6, 1941 are of no effect.

Now, your Honor, I expect to show by the witness that I am going to put on that the treaties into which Servia and Yugoslavia entered were enacted into the law of that country just as they were enacted to the law of this country, and that the meaning of this provision is that all law, not just, [266] as counsel for Yugoslavia has said in reading certain sections of the civil law and the land reform laws, in fact we expect—I have no translation of this, your Honor—but your Honor will please understand that even today we have discovered additional edicts and laws of the Yugoslav government bearing upon and interpreting the meaning of that law. And I have gotten one so recently that I have had no opportunity to

even get an informal translation other than that of my witness.

Mr. Walker: If I may interrupt Mr. Reynolds. This constitution appears to have emanated from the Information Officer of the Yugoslav Embassy. I have no objection to it being introduced.

The Court: It will be marked next in order.

The Clerk: No. 14.

(The document referred to was received in evidence and marked Petitioner's Exhibit No. 14.)

The Court: Going back again to the genealogy of this treaty, Croatia was a part of Austria before the first World War?

Mr. Reynolds: It was just then prior to the first World War a part of the Austro-Hungarian Empire which was established in 1866, your Honor. Prior to that time it was part of the Austrian Empire. And of course Hungary was also part of the Austrian Empire prior to 1866. [267]

The Court: At the conclusion of the first World War by what treaty was Croatia severed from Austria, the treaty with Austria which was not ratified and affirmed by the United States Senate?

Mr. Reynolds: Not according to my understanding, your Honor. My understanding is that the Croatian people—and my witness will also touch that if your Honor is interested—that the Croatian people detached themselves. They already had a semi-autonomy and they detached themselves of their own volition from the Austro-Hungarian Empire and in-

tended to enter into an equal alliance with the Serian government.

The Court: Yes, but they were then later recognized in some treaties. What I am trying to get at is where is the treaty, the first treaty with the United States which recognizes that there was the Kingdom of the Serbs, Croats and Slovenes.

Mr. Reynolds: Your Honor, I have no knowledge of any such treaty.

The Court: Was it in the treaty of Saint Germain?

Mr. Reynolds: It must have been. After all, that was not ratified. The Government recognized that such a state existed by entering into a treaty with it.

The Court: Here is a treaty referred to between the Principal Allied and Associated Powers and Poland, Rumania, [268] the Serbs, Croats, Slovenes State and Czechoslovakia State, respectively, to certain frontiers, signed Sevres, S-e-v-r-e-s—I do not know how to pronounce that—August 10, 1920, did not enter into force.

Then there is the treaty of Saint Germain, September 10, 1919.

Mr. Reynolds: Which did enter into force but not between the United States and the State of Serbs, Croats and Slovenes.

The Court: And a treaty between the Principal Allied and Associated Powers and the Serbs, Croats, Slovenes States signed at Saint Germain September 10, 1919, entered into force with the Treaty of Peace with Austria on July 16, 1920.

Mr. Walker: I believe the point of recognition is

covered on page 4 of the Government's brief at the top of the page. That may be helpful.

Mr. Reynolds: That treaty wasn't ratified by the United States.

Mr. Walker: Recognition, as I understand it, does not necessarily have to be by treaty.

Mr. Reynolds: I am not arguing that the state was recognized. What I am arguing is that the treaty was not signed, which would apply the law and treaty of Servia to the whole state. I contend the United States Government has every right to recognize every state that it wants to, but the [269] mere recognition doesn't mean that treaties suddenly spring into force.

The Court: If that were the case, there would have been a lot of treaties gone into force between the United States and Soviet Russia upon their recognition back in 1932 or 1933.

Mr. Reynolds: You mean it would have sprung back into effect?

The Court: Sprung back into force. But they certainly did not, and I do not think anyone would attempt to assert that they did.

Mr. Reynolds: I couldn't find any reference to the fact that they attempted to assert it. I attempted to research that point, among others too.

The Court: Very well. Proceed with your argument.

Mr. Reynolds: We do know that in 1927, according to the publications of the United States Government, an effort was made to enter into a treaty of commerce and amity, or friendship, between the new state of the Kingdom of the Serbs, Croats and Slo-

venes and the treaty was even drafted and certain suggestions were made between the various governments, but it went no further.

The Court: Was there as suggested revision in there that previous treaties be reaffirmed?

Mr. Reynolds: No, your Honor, there was not. And what [270] is more, the Yugoslav government—I call it the Yugoslav government, although it was then the Kingdom of Serbs, Croats and Slovenes—suggested at the time of the consideration of the treaty of commerce and amity that new treaties of extradition and other matters be undertaken at the same time, and our Government refused to do it, maintaining its position that that treaty was still effective and that it was a modern—I believe they described it as a modern vehicle—a modern convention.

The Court: Very well. Proceed.

Mr. Reynolds: All right, your Honor.

At this point I would like to bring my witness in. He does not speak the English tongue very well.

The Court: Did you get the interpreter?

Mr. Reynolds: I got the interpreter, and I understand the proper procedure is for the court—I am not familiar with this—to swear the interpreter first and then the witness.

The Court: Yes. We swear the interpreter first and then swear the witness through the interpreter.

Mr. Reynolds: Vincent F. Vitelli, your Honor, is the interpreter in this case.

The Court: This is in French?

Mr. Reynolds: Yes, your Honor. [271]

VINCENT F. VITELLI

was thereupon duly sworn to interpret from French into English and from English into French, as follows:

The Clerk: Will you state your name?

The Interpreter: Vincent F. Vitelli.

The Clerk: How do you spell your name?

The Interpreter: V-i-t-e-l-l-i.

The Clerk: Your address?

The Interpreter: 621 South Hope Street, Los Angeles.

The Court: Very well. Now before you interpret I think it would make for a better procedure if you would take the seat right by counsel.

Mr. Walker: Your Honor, I mean no offense for this interpreter at all, but I have not had the pleasure of knowing him before and I do not know from what source he was obtained.

I wonder if the court would care to qualify him.

The Court: Yes.

Mr. Vitelli, you have been sworn to interpret from the French to the English and English to the French. What is your experience in that connection?

The Interpreter: I have been interpreting since 1929 for various courts. I am officially employed by the County of Los Angeles, and my name is on the list as a French and Italian interpreter.

The Court: You were born in France? [272]

The Interpreter: I was born in Belgium, raised in Paris, and Italy. I interpret both languages, French and Italian.

The Court: Do you have any further questions?

(Testimony of Vincent F. Vitelli.)

Mr. Walker: No. I assume he has no connection with the accused here.

The Court: Do you have any connection with the accused here, Mr. Artukovic?

The Interpreter: None whatsoever.

The Court: Very well. Or the Yugoslav government?

The Interpreter: None whatsoever, your Honor.

The Court: Very well. I think if you will just be seated there and repeat the questions.

Come forward and swear the witness.

Mr. Reynolds: Mr. Drezga.

TIHOMIL DREZGA

called as a witness by and on behalf of the petitioner, having been first duly sworn through the interpreter, was examined and testified as follows:

The Court: Be seated here.

The Clerk: State your name in full, please.

The Witness: Tihomil Drezga.

The Clerk: Will you spell it?

The Witness: T-i-h-o-m-i-l, D-r-e-z-g-a.

The Clerk: Your address?

The Witness: Cleveland. [273]

The Court: Whereabouts in Cleveland?

The Witness: 71st Street, 1008.

The Clerk: California?

The Court: Cleveland, Ohio. I take it it is 1008, 71st Street, Cleveland, Ohio?

The Witness: Yes.

The Court: Proceed, counsel.

(Testimony of Tihomil Drezga.)

Direct Examination

Q. (By Mr. Reynolds): Explain to the witness my first questions will be qualifying him as an expert in law.

The Witness: I do. I understand.

Q. In what schools did he receive his legal education?

A. I have had my university studies in Vienna, Hungary, Austria—excuse me—Paris, France, and The Hague, Holland.

Q. What degrees did you receive from any or all of these universities?

A. The last degree that I have received was in Paris, was a Doctor of Rights.

Q. Is that a Doctor of Laws?

A. Doctor of Laws.

Q. In what year did he obtain this degree?

A. 1931.

Q. At the time he received his degree of Doctor of Laws, upon what subject did he write his thesis?

A. I have written my thesis, the permanent court of international justice of The Hague.

Q. After graduating in law, what practice has he had, what experience has he had in law?

A. After my studies I have gone back to my country, Zegreb, Croatia, the capital of Croatia, and in that city I followed the following professions:

From 1932 to 1936 I was a judge of the first tribunal of Zegreb. After that I give my resignation

(Testimony of Tihomil Drezga.)

and I entered the profession of lawyer from 1936 to 1939.

After that I realized my dream and I became a professor of international law, and I have followed that profession in various degrees up to 1946.

The Court: Where?

The Witness: 1945. In Zegreb, Croatia.

The Court: University?

The Witness: Yes.

The Court: What? Which one? Which university?

The Witness: University of Zegreb, being on the faculty of law of the University of Zegreb.

The Court: Up until 1946?

The Witness: '45, May 1945.

The Court: What then?

The Witness: After naturally I was a professor no longer because the country was taken by the Communists—— [275]

The Court: What did he do in the meantime? Was he a teacher or professor or lawyer or just a student?

The Witness: After that I had no more profession. I have done nothing after that.

The Court: Have you maintained your studies on international law?

The Witness: Yes, I have kept myself as busy as I could with my studies of international laws under the circumstances because it was very hard to be able to obtain books, literature, Occidental literature.

(Testimony of Tihomil Drezga.)

In 1948 I escaped from the country to Rome, Italy. I stayed in Italy three years, until the end of August this year. On September 26 this year I came back to the United States.

The Court: Very well.

Q. (By Mr. Reynolds): I desire to have the witness identify this document. It is in the Croatian tongue.

Mr. Walker: I will object to the qualification of the witness as failing in foundation subsequent to 1945. I think he has not been in active practice nor by his own statement has he been able to pursue or continue his studies of international law. I don't know what period counsel intends——

The Court: You do not know what changes have occurred [276] since then? I do not think anybody else does either.

Mr. Walker: I don't know what period counsel's questions are directed to, but I think he has not qualified him as an expert subsequent to 1945.

The Court: I think he has. I take it that he is going to ask him some questions concerning the effect of some law now.

Mr. Reynolds: Yes, your Honor.

The Court: Or whether it is in force.

Mr. Reynolds: Yes.

The Court: What document have you handed the interpreter?

Mr. Reynolds: I have handed him a copy of the Federal Register, or rather an excerpt photostated from the Federal Register, or the Official Gazette

(Testimony of Tihomil Drezga.)

of the Federal People's Republic of Yugoslavia, dated October 25, 1946, which contains in the Serbian-Croatian tongue some laws which have been translated and attached to our brief, your Honor. The witness speaks that tongue better than he speaks the English tongue or I would give him this translation.

The Court: What are we going to do with Mr. Vitelli?

Mr. Reynolds: I am going to ask this gentleman, the witness, to testify as to the meaning of certain sections of this law which are translated and attached to our brief, your Honor, and I am going to introduce this also as another piece of evidence. [277].

I explain to your Honor that I was only able to get this photostat from the Library of Congress on Thursday last and I was not able—it is clearly marked "Photoduplication Service, Library of Congress, Washington 25, D. C.," and I am sure the Yugoslav government won't deny its own act. I was not able to obtain a certification in time to present it to the court. They could not certify it at the time I had to leave the city.

Mr. Walker: I will not insist that it be a certified copy if it is properly identified.

(The document referred to was passed to counsel.)

Mr. Walker: May I have a moment, your Honor?

The Court: Surely.

(Conference between counsel.)

(Testimony of Tihomil Drezga.)

Mr. Walker: I don't suppose you have a copy of this, Mr. Reynolds?

Mr. Reynolds: Yes.

(The doucment referred to was passed to counsel.)

The Court: Counsel, there is a regular meeting of the judges today that begins at 3:30. I will have to recess for about 20 minutes, so if you have any more documents during that 20 minutes, why I wish you would show them to counsel so that he can be examining them, and also to the witness as well so he will have an opportunity to familiarize himself with them, without taking up too much time in [278] court.

Mr. Reynolds: Yes, your Honor.

The Court: We will have a recess.

(Short recess.)

The Court: Proceed.

Mr. Reynolds: Your Honor, the attorney for the Yugoslav government has examined this and has no objection, and I would like to offer it in evidence and then turn it over to the witness.

The Court: It may be admitted as Plaintiff's Exhibit number?

The Clerk: 15.

(The document referred to was received in evidence and Marked Petitioner's Exhibit No. 15.)

Mr. Walker: Mr. Reynolds has, he informs me,

(Testimony of Tihomil Drezga.)

a copy of the translation. If that is an extra copy, it might be attached to the original and would be more helpful to the court.

Mr. Reynolds: Yes. I would be glad to do that.

The Clerk: 15-A, your Honor.

(The document referred to was received in evidence and marked Petitioner's Exhibit No. 15-A.)

PETITIONER'S EXHIBIT No. 15-A

Translation from the Official Gazette of the FPRY No. 86, of October 25, 1946, item 605.

Edict

Pursuant to Article 74, Subsection 6 and Article 136 of the Constitution, the Presidium of the National Assembly of the FRPY hereby promulgates the Law to Affirm and Amend the Decree of February 3, 1945 Repealing and Invalidating all Provisions of Law Enacted by the Occupying Forces and Their Collaborators during the Occupation by the Enemy, and also, dealing with the Validity of Decisions Rendered During that Period, and with the Annulment of Provisions of Law in Force at the Time of the Occupation by the Enemy, which (law) was enacted by the legislative Committee of the Federal Council and the Legislative Committee of the Council of Nations of the National Assembly of the FPRY by virtue of the Power Granted by Article 136 of the Constitution, and which reads:

Petitioner's Exhibit No. 15-A—(Continued)

LAW

to Affirm and Amend the Decree Repealing and Invalidating all Provisions of Law Enacted by the Occupying Forces and Their Collaborators during the Occupation by the Enemy, also, dealing with the Validity of Decisions Rendered During at that Period, and with the Annulment of the Provisions of Law in Force at the Time of the Occupation by the Enemy.

The Dec ee (of February 3, 1945) repealing and invalidating all provisions of law enacted by the occupying forces and their collaborators during the occupation by the enemy, also dealing with the validity of decisions of law in force at the time of the occupation by the enemy, is hereby affirmed with the Amendments contained in the present law, so that its amendment and revised text reads as follows:

LAW

Repealing Provisions of Law Enacted Prior to April 6, 1941 and (those enacted) during the Occupation by the Enemy.

Section 1

Provisions of law (laws, decrees, ordinances, regulations, (directives) and the like) enacted by the occupying forces and their collaborators within the territory of the Federative People's Republic of Yugoslavia during the occupation by the enemy, are hereby declared to be non existent.

Petitioner's Exhibit No. 15-A—(Continued)

Section 2

Provisions of law (laws, decrees, ordinances, regulations (directives), and the like) which were in force on April 6, 1941 (are hereby declared) have lost their legal effect.

Section 3

The Presidium of the National Assembly of the FPRY may decree that individual rules of law contained in laws and other provisions of law mentioned in Section 2 of the present Law, shall continue to apply, and at the same time shall decree the needed changes and amendments.

The presidiums of the National Assemblies of the individual people's republic shall likewise also be entitled to decree the application of such provisions of law and the enactment of which, according to the Constitution of the FPRY, comes within the jurisdiction of the republics.

Section 4

Rules of law contained in laws and in other provisions of laws specified in Section 2 of the present Law that were not declared under Section 3 of the present Law to be binding, may nevertheless apply under the present Law to the relations not regulated by the provisions of law in force but only insofar they are not in conflict with the Constitution of the FPRY, the constitutions of the people's republics, the laws and other provisions of law in force issued by proper agencies of the new State, as well as with the principles of the constitutional

Petitioner's Exhibit No. 15-A—(Continued)

order of the Federal People's Republic of Yugoslavia and its republics.

Government agencies may not expressly base their decisions and other acts upon these provisions.

Section 5

Rules of law specified in Section 3 and 4 of the present Law may not apply with regard to organization of government authorities, government institutions and government enterprises.

Rules of law contained in legal provisions which under Section 2 of the present Law lost their legal effect, may not be used as the basis for enactments of new provisions (of law).

Decisions (praksa) and legal interpretations of courts and other governmental agencies of the former Yugoslavia, may not be used as a basis for the interpretation and application of rules of law coming under Sections 3 and 4 of the present Law.

Section 6

Legal relations which arose at the time when the laws of the former Yugoslavia were in force or during the occupation by the enemy and have not been decided yet, shall be decided according to the provisions (of law) in force and within the Federative People's Republic of Yugoslavia.

Section 7

Decisions (judgments, decrees, interlocutory orders, and the like) of courts handed down after April 6, 1941, concerning relations governed by private law shall remain in force.

Petitioner's Exhibit No. 15-A—(Continued)

If the court decision concerning such relations is based upon provisions of law issued by the occupying forces and their collaborators or upon the provisions coming under Section 2 of the present Law, (and) is in conflict with the provisions now in force, the person who considers himself aggrieved by such a court decision may within one year from the day of the enactment of the present Law institute proceedings asking the competent court to examine the legal relation and to render a decision on the basis of the provisions (of law) now in force.

In the absence of any party aggrieved by such a decision of the court or, if such a party is unable to institute proceedings for any reason whatever, the proper agency shall institute proceedings.

Section 8

As soon as proceedings under Section 7 of the present Law are instituted, the rights adjudicated by the court decision whose annullment or change is asked may not be enforced.

By way of exception from the rule stated in the preceding paragraph concerning the support of children, parents and other persons who are sick or unable to work, may continue to be enforced.

Section 9

Entries made in Land Title Records on the basis of decisions specified in Section 7 of the present Law shall remain in force. The party, or the proper agency of the people's authority who (or which) instituted proceedings under Section 7 of the present

Petitioner's Exhibit No. 15-A—(Continued)

Law in the competent court, may request that the dispute over the request based on the above mentioned decisions be noted in Public Records, (in Land Title Records, Mining Books, Register of Cooperatives and the like).

Section 10

Decisions (sentences, judgments, interlocutory orders and the like) in criminal matters rendered by ordinary criminal courts during the occupation by the enemy which are based upon the provisions (of law) in force on the day of April 6, 1941, but do not involve political offenses, shall remain in force unless the competent court, upon motion of the public prosecutor, renders a new decision.

Decisions in criminal matters which had a political character or were rendered on the basis of provisions (of law) enacted by agencies of the occupying forces and their collaborators, are hereby set aside and shall have no legal effect, regardless whether they have been rendered by ordinary or other courts, or other agencies (military courts, extraordinary courts, police agencies and the like). In such cases the public prosecutor may move for a new decision to be rendered by the competent agency of the people's authority.

Section 11

(As originally enacted). With regard to decisions concerning relations governed by private law and rendered by executive and administrative agencies of the occupying forces and their collaborators during the occupation by the enemy, as well as with regard

Petitioner's Exhibit No. 15-A—(Continued)

to decisions of administrative courts insofar as they are not of a political matter, the provisions of Section 7, 8 and 9 of the present Law shall apply by analogy.

(As originally enacted). All other decisions of executive and administrative agencies of the occupying forces and their collaborators, decisions of administrative courts of political character as well as decisions of disciplinary courts concerning disciplinary offenses committed after April 6, 1941, shall be (considered) as set aside.

(As originally enacted). The public prosecutor may move for the reopening of disciplinary proceedings concerned with the disciplinary offenses which violated the provisions (of law) enacted before April 6, 1941, with regard to property interests of the government.

Section 11, paragraph 1 and 2 as amended December 23, 1946 (Law No. 744, Official Gazette No. 105, December 27, 1946).

The provisions of Sections 7, 8 and 9 of the present Law shall apply to decisions rendered by executive and administrative agencies of the occupying forces and their collaborators as well as to decisions concerning relations governed by private law rendered by administrative tribunals during the occupation by the enemy.

All other decisions of executive and administrative agencies of the occupying forces and their collaborators and decisions of administrative tribunals as well as decisions of disciplinary courts concern-

Petitioner's Exhibit No. 15-A—(Continued)

ing offenses committed after April 6, 1941, shall be (considered) non existent.

Section 12

The present Law shall go into effect on the eight day after its publication in the Official Gazette of the Federal People's Republic of Yugoslavia. U. No. 558.

October 23, 1946.

Presidium of the National Assembly of the Federative People's Republic of Yugoslavia.

DR. IVAN RIBAR,
President,

MILE PERUNICIC,
Secretary.

I, Fran Gjupanovich, former Justice of the Court of Appeals in Novisad, Yugoslavia, now temporary employee of the Library of Congress, Law Library, Foreign Law Section, employed as a digester, have a thorough knowledge of the English language and the Serbo-Croatian language and the above is a true and correct translation from Serbo-Croatian into English of the Law No. 605, published in the Official Gazette of the FPRY, October 26, 1946, No. 86, according to the best of my ability.

/s/ DR. FRAN GJUPANOVICH.

Q. (By Mr. Reynolds): Are you familiar with the provisions of law 605 set forth on the exhibit? [279]

A. Yes.

(Testimony of Tihomil Drezga.)

The Court: What language is it in?

Mr. Reynolds: Serbian-Croatian and——

The Court: Let us have the witness say.

Mr. Reynolds: I am sorry.

The Witness: In the Serbian language.

The Court: Do you speak the Serbian language?

The Witness: Yes.

The Court: Read it.

The Witness: Yes.

The Court: Very well. Go ahead.

Q. (By Mr. Reynolds): Draw the witness' attention to Section 2 of said law and ask in his opinion what effect the said section has on previous law of Yugoslavia.

Mr. Walker: I object to that, your Honor. Your Honor has before him a translation of the act. There is nothing which requires interpretation. The document speaks for itself.

The Court: Objection sustained.

Mr. Reynolds: If your Honor please, I would like to point out that counsel for the Yugoslavs intended that that only applied to civil law and certain land reforms, and it was only in view of that that we brought an expert witness to testify to it. In his own brief he says that, your Honor. [280] I don't believe he will even deny it.

The Court: What is the literal translation of Section 2? Ask the witness that.

The Witness: The literal translation of Article 2 is the following——

(Testimony of Tihomil Drezga.)

The Court: Wait a minute. Let him give it to us a piece at a time.

The Witness: The rules of law, in parentheses, the law, ordinance, decree, regulations, etc., end of parentheses, which are in force on April 6, 1941 have lost their judicial force.

The Court: Was that "which are in force on April 6, 1941" or "which were in force"?

The Witness: Were in force.

The Court: Proceed, counsel.

Q. (By Mr. Reynolds): Is the treaty law of Yugoslavia included in the general body of law of that country?

Mr. Walker: That is objected to, your Honor, on the ground that the witness has not been qualified to answer that question. I believe he left Yugoslavia before the present regime was installed.

Mr. Reynolds: I will reframe it.

Q. Was the treaty law of Yugoslavia prior to 1941 incorporated in the general body of law of Yugoslavia? [281].

A. If you please, will you repeat the question?

Q. Was the treaty law of Yugoslavia prior to 1941 included in the general body of law of that country?

Mr. Walker: I object to the form of the question as somewhat ambiguous.

The Court: It is uncertain.

What you want to know is whether or not the treaties, international treaties, were included in the general body of law of Yugoslavia prior to 1941?

(Testimony of Tihomil Drezga.)

Mr. Reynolds: Yes, your Honor.

The Court: Ask him that.

The Witness: Evidently the laws of treaties were included into the general system of laws before 1941.

The Court: How? By special enactment of Parliament or a law-making body?

The Witness: It was according to the judicial order in force then.

Mr. Reynolds: Your Honor, I think I have a question I would like to ask him that would straighten out that point.

The Court: Very well.

Q. (By Mr. Reynolds): Prior to 1941 were treaties between Yugoslavia and other countries proclaimed as law in the Official Gazette of Yugoslavia?

A. Yes, evidently all the treaties were incorporated [282] and published by necessity.

The Court: What does he mean "evidently"? Were they or were they not? Were they published in the Gazette?

The Witness: Because it was the acquisition, the usage, the matter of the usage and custom of all anti-Communistic countries.

The Court: That still does not answer the question, whether the treaties were or were not published in the Official Gazette.

The Witness: Because it was the constitution and regulation that all international treaties were to be published.

(Testimony of Tihomil Drezga.)

The Court: How? In the Official Gazette or what?

The Witness: In the Official Gazette.

Mr. Reynolds: Your Honor, I would explain that we have to touch this point by this witness because the files of the Library of Congress do not contain the "Official Gazette of Serbia from the period 1901 to 1908." We found in the Official Gazettes the files of other years numerous treaties proclaimed into law. It was the custom of the country, and I don't believe counsel for Yugoslavia will contest that, that that was the custom.

The Court: Go ahead and ask some questions.

Mr. Walker: I can't see exactly the materiality of this. I assume they were published somewhere.

Mr. Reynolds: All I am trying to prove, your Honor, is that they enacted them into law.

The Court: Where were the general laws of Yugoslavia published? In the Official Gazette?

The Witness: Also.

The Court: What is the Official Gazette?

The Witness: It is the official journal, the title.

The Court: Was it similar to the law books, the statutes of the United States: Are you familiar with these (exhibiting volumes)?

The Witness: Not by court but general.

The Court: The laws of Congress, are you familiar with the statutes of the United States? Here is the United States Code. That is published in the Government Printing Office and these are laws. Do you understand that?

(Testimony of Tihomil Drezga.)

The Witness: Yes. It is the official publication made by the Government.

The Court: Where do you go to find the law? In the Official Gazette or where?

The Witness: In the Official Gazette.

The Court: Very well.

Mr. Reynolds: Your Honor, I might call attention to Appendix A to our brief, which is the law in question, Section 12 thereof, which says: "The present law shall go into effect on the 8th day after its publication in the Official [284] Gazette of Federal People's Republic of Yugoslavia."

The Court: What is the date of that publication? Ask the witness that.

Mr. Reynolds: Of this publication here, your Honor, of the publication of this law?

The Court: What is the date of the publication that the witness has before him?

The Witness: October 23, 1946.

Mr. Walker: Your Honor, may I have a moment?

(Conference between counsel.)

The Witness: That is, the law was in effect on the 23rd. The publication bears the date of the 25th.

Q. (By Mr. Reynolds): In your opinion, does a sovereign state have the power unilaterally to terminate or abrogate a treaty to which it is a party?

A. To this question I am going to answer thusly: According to the rights of the community international traditionally Occidental, in the treaties that

(Testimony of Tihomil Drezga.)

is in force the treaties have to be obeyed. Therefore a state which belongs to the Occidental system, a country which belongs to the Occidental system, doesn't very often abrogate an international treaty. But the practice unfortunately exists so much that in the Orient system, the Sovief system, there is theatrical possibility of abrogating and terminating, voiding, [285] a treaty such is in conflict and in opposition of the national communion of the Communist revolution. Therefore this is because there are differences of principles, of theories, of the two different systems.

Mr. Walker: Your Honor, it occurs to me that the question is non-responsive. It has come so brokenly I wonder if I might ask to have the question and the entire answer read so that I can move to strike if it is necessary.

The Court: Yes, I think I understand his answer. He says that in the western community, Occidental community, of nations they try to keep their treaties, but unfortunately they once in a while unilaterally abrogate them, but under the Communist system if a treaty conflicts with what they deem to be the present national interest they disregard it. That is the long and short of his testimony.

Mr. Walker: May I have the question itself read?

(The question referred to was read by the reporter as follows:

(Testimony of Tihomil Drezga.)

("Q. In your opinion, does the sovereign state have the power unilaterally to terminate or abrogate a treaty to which it is a party?")

Mr. Walker: Then I move to strike the answer as not responsive. The question goes to the power to do something, not the custom or usage of different systems or anything of the sort. [286]

The Court: That is his answer. The motion to strike is denied.

Mr. Reynolds: I have no further questions to ask this witness, your Honor.

The Court: Cross examine.

Mr. Walker: Just a question or two, your Honor.

The Court: Mr. Reynolds, where can you find the constitution of Yugoslavia? You refer in your brief to the constitution——

Mr. O'Connor: That is Exhibit 13, your Honor.

(The exhibit referred to was passed to the court.)

The Court: Which part is it in that refers to the body who has the power to approve treaties?

Mr. Reynolds: Article 74, Section 9.

The Court: Very well.

Cross examine.

Mr. Walker: Yes, your Honor.

Cross Examination

Q. (By Mr. Walker): The witness testified that he left Zegreb I believe in 19—you testified, Mr. Drezga, that you left Zegreb in 1945?

A. 1948.

(Testimony of Tihomil Drezga.)

The Court: 1948. [287]

Q. (By Mr. Walker): And between the period of 1941 and 1948, did you hold any official position there?

A. I have already said that from 1941 to 1945—1939 to 1945, I have already told you I was a professor of law.

Q. Did you have any other occupation other than professor of law? A. No.

Q. You did not sit as a judge then during the period in which the independent state of Croatia, so-called, existed?

A. I terminated my judgeship in 1936. From 1936 to 1939 I was a lawyer.

Q. Was your position as a professor of international law held under the so-called independent State of Croatia? In other words, was it an official appointment?

A. The professors of a university are, throughout the world, on state—I will repeat the answer.

The professors of a university are under the jurisdiction of the state, also those of the university are interested.

Q. The University of Zegreb then was not during the period from 1941 to '45 maintained by the independent State of Croatia as a state institution?

A. It is well known that the university faculties, [288] that teaching is free, but the university itself is an institution of the state.

The Court: Teaching is free?

(Testimony of Tihomil Drezga.)

The Witness: (In English) The teaching is free; yes.

Q. (By Mr. Walker): The institution is maintained by moneys derived from the state? I am referring only to the period from 1941 to 1945.

Let me reframe the question. During that period was the University of Zegreb maintained by moneys from the independent State of Croatia?

A. Evidently.

Q. During that period you did know the accused here, Dr. Artukovic? A. Yes.

Q. What was the occasion of your acquaintance with him?

A. I have seen very little of him, maybe two or three times during some meeting when he was a minister and I was a professor.

Q. Were you connected in any way with the Ustachi movement during that period of time?

A. I was a member of the Ustachi party.

Mr. Walker: I think that is all, your Honor.

The Court: Any further questions? [289]

Mr. Reynolds: No, your Honor.

The Court: The witness may be excused.

(Witness excused.)

The Court: Have you finished with the interpreter's services?

Mr. Reynolds: Yes, your Honor.

The Court: Thank you, Mr. Vitelli.

(The interpreter excused.)

Mr. Reynolds: I only have one or two more points to bring to your Honor's attention.

I would like to draw the court's attention to the fact that in the Yugoslav demand on March 31, 1951, in the Yugoslav demand upon our State Department for the extradition of Mr. Artukovic of March 31, 1951, the Yugoslavs charged him with the crimes of assassination, but although assassination is a treaty crime, that is, one listed under the treaty which they now allege is in effect, they did not request his extradition under that treaty.

Your Honor, that is one more circumstance in my contention that the Yugoslav government has not considered the treaty of extradition to be effective between that government and this until it suited their purposes.

Your Honor, I close my remarks.

The Court: Anything further?

Mr. O'Connor: Your Honor please, there is a long statement [290] about the law of the present position, but according to Mr. Walker's statement this morning he is going to withdraw this complaint that is on file now and file an amended complaint, and after the amended complaint is filed then we would like to have an opportunity to present the law as to the validity of the complaint and the validity of the statute under which they are proceeding.

The Court: I think you are entitled to have that opportunity. I would like, however, to be able to get the matter decided in order, if I should decline to grant the writ, the hearing may proceed within the time scheduled before the Commissioner, and in

order that the 60 days may not expire under the terms of the treaty by which the court would apparently lose all jurisdiction.

So if you cannot get your amended complaint in for a week, I guess they cannot get any briefs that they might have or any attacks they might desire to make on it in either.

Mr. Walker: Your Honor, I will file it just as soon as I am physically able to do so. Your Honor knows I have another motion in this bank case before the Circuit that I have to prepare.

The Court: When is that set?

Mr. Walker: That is set for the 19th.

The Court: I thought it was last week.

Mr. Walker: No, it is set for the 19th. I have a long [291] motion or memorandum to prepare there. I will have additional work on this. I will have a girl working on this, much of which will be copy work, but the indictment is close to a hundred pages. I would like to promise that I could get it in by Friday, but I am just afraid it will take the week end to complete it.

In any event, Your Honor, the evidence which I have, the accusation or the indictment, the warrant, will all be filed with the amended complaint before the Commissioner, so that the 60-day provision will be taken care of by the presentation of that evidence to the Commissioner.

The Court: So that you would not need to go ahead with the hearing on the 22nd of necessity?

Mr. Walker: We could hold it in abeyance pending your Honor's decision.

Mr. Reynolds: Your Honor, may I inquire whether inasmuch as the two causes or two actions being argued here entirely independently, one on the sufficiency of the complaint and the other on the question of the existence of the treaty, the court is in position to render a decision on one in the interim? In other words, if the court, as I see it, should render a decision that the treaties are not in existence then it wouldn't make any difference in the complaint at all.

The Court: In the brief filed by Mr. Walker he argues [292] and cites a case to the effect that the determination as to whether or not the complaint is sufficient, under the laws of the State of California, is within the sole province of the Commissioner.

Mr. Walker: Sufficient in particularity and certainty, your Honor.

The Court: I do not know that that is the law, and I do not know if I agree with him.

Mr. O'Connor: No, we don't agree with that at all. It is our position here that this court is called upon to determine whether or not this proceeding is being conducted in accordance with the extradition statute, and that the sufficiency of the indictment is only one of the reasons why this proceeding is not being conducted in accordance with the extradition statute.

The Court: I think I understand your position.

No, I would not want to decide it piecemeal. Of course if I decide that there is no treaty, then it is immaterial about the other. On the other hand, if I

decide the complaint is insufficient then it may not be necessary to decide the other.

But in view of the importance of the matter and the probability that whatever decision I make will be appealed, I feel that I should in all justice to the presentation of the problem decide both questions if it is within my province [293] to decide them, so that any reviewing court, if they have an opportunity, may ascertain what my views were, and may agree with me on one or disagree with me on another, or agree with me on both, or disagree with me on both.

I do not know what kind of an order to make here, Mr. Walker. I want to accommodate you as to your time, but I would like to continue this matter to some day certain in view of the bond which I have required the defendant to produce.

Mr. Walker: If it could be continued one week, I am certain I can have the amended complaint on file. However, that would not give counsel for the accused much opportunity to prepare and present any argument in opposition to it.

The Court: Well, I might continue it, say, until the 19th—but that is the day you have to be in San Francisco.

Mr. Walker: That is when I have to be in San Francisco.

The Court: If I were to continue it until the 18th, Thursday, and if you could not get your amended complaint in——

Mr. Walker: There are several dollars involved

in the appeal and I would like at least half a day to get ready for it.

The Court: Well, I guess the only thing I can do then is to continue it to the 22nd, that is the same date that the Commissioner's hearing is set. [294]

Mr. Reynolds: That is agreeable to us.

The Court: And require the amended complaint to be filed not later than the 15th, and any and all briefs, pro or con, either way, to be filed not later than the morning of the 22nd, from each side.

Mr. Reynolds: That is much better for us, because I must be here anyway on the 22nd for the hearing before the Commissioner.

Mr. Walker: The 15th is next Monday.

The Court: The 22nd is two weeks from today.

Mr. Walker: I am quite sure I can have it on file by that time.

The Court: That will give each side an opportunity to file whatever briefs they want by the 22nd at 10 o'clock a.m., to which the matter is now ordered continued, and the defendant is ordered and directed to be and appear here in this courtroom on that date.

Mr. Reynolds: Your Honor, may I ask one question, please?

Mr. Walker: Since counsel are in several parts, and I am only one, I will have to be before the Commissioner and here at the some time, your Honor. I assume we can make arrangements to cover that.

The Court: I imagine so.

Mr. Reynolds: The question I wanted to ask your Honor [295] was whether the hearing on the 22nd

will concern itself with the question of the sufficiency of the complaint. In other words, is everybody satisfied now or are we going to present further evidence on the question of the treaty law, or do you want to be bound by that?

The Court: I have nothing to be satisfied about. I am a judge. I am here to decide matters.

Mr. Reynolds: I understand that.

The Court: It is up to you people. You have put in all of your evidence.

Mr. Reynolds: Yes, your Honor.

The Court: And likewise Mr. Walker.

Mr. Walker: As far as I know, yes.

The Court: All the evidence that you will have and therefore the matter will be confined solely to the amended complaint and the questions of law that arise therein.

Mr. Reynolds: Yes, your Honor. That is all I wanted to know.

The Court: Otherwise the matter will be submitted on the question of the treaty.

Mr. Walker: I want to close, if possible.

The Court: Do you want to argue some more?

Mr. Walker: I want to give Mr. Danielson a chance first.

Mr. Danielson: The respondent has nothing further to offer, your Honor. [296]

The Clerk: How about the exhibits, your Honor?

The Court: They are admitted. All the rest are admitted.

The Clerk: Demanding Government's Exhibits C, D, E, F, and G.

(The documents referred to were received in evidence and marked Demanding Government's Exhibits C, D, E, F, and G respectively.)

DEMANDING GOVERNMENT'S EXHIBIT E

No. 4950

United States of America
Department of State

To all to whom these presents shall come, Greeting:

I Certify That the document hereunto annexed (Treaty Series 406) contains a true and complete copy of the English language text of the treaty between the United States of America and Servia respecting mutual extradition of fugitives from justice, signed at Belgrade October 25, 1901;

That all of the provisions of the said treaty, which entered into force between the United States of America and the Kingdom of Servia on June 12, 1902, continued in force and were applicable to the whole territory of the Kingdom of the Serbs, Croats, and Slovenes, as constituted on December 1, 1918, and to the Kingdom of Yugoslavia, to which the name of the Kingdom was changed by a law of October 3, 1929;

And that all the provisions of the said treaty continued in force and became applicable to the Federal People's Republic of Yugoslavia as proclaimed on November 29, 1945 and are presently in force between the United States of America and the Federal People's Republic of Yugoslavia.

In testimony whereof, I, Dean Acheson, Secretary

of State, have hereunto caused the seal of the Department of State to be affixed and my name subscribed by the Authentication Officer of said Department, at the city of Washington, in the District of Columbia, this twenty-sixth day of September, 1951.

[Seal] /s/ DEAN ACHESON,
Secretary of State,

/s/ By M. P. CLAUVIA,
Authentication Officer,
Department of State.

Servia—Extradition.—Treaty Series 406

Treaty Between The United States and Servia for the Mutual Extradition of Fugitives from justice.[1]

Signed at Belgrade, October 25, 1901.

Ratification advised by the Senate, January 27, 1902.

Ratified by the President, March 7, 1902.

Ratified by Servia, March 17, 1902.

Ratifications exchanged at Belgrade, May 13, 1902.

Proclaimed May 17, 1902.

By the President of the United States of America.

A Proclamation

Whereas a Treaty between the United States of America and Servia providing for the extradition of fugitives from justice was concluded and signed

[1] The Servian text, in Russian characters, is necessarily omitted in print.

by their respective Plenipotentiaries at Belgrade on the twenty-fifth (twelfth) day of October, one thousand nine hundred and one, the original of which Treaty, being in the English and Servian languages, is word for word as follows:

The United States of America and His Majesty the King of Servia, being desirous to confirm their friendly relations and to promote the cause of Justice, have resolved to conclude a treaty for the extradition of fugitives from justice between the United States of America and the Kingdom of Servia, and have appointed for that purpose the following Plenipotentiaries:

The President of the United States of America, Charles S. Francis, Envoy Extraordinary and Minister Plenipotentiary to His Majesty the King of Servia.

His Majesty the King of Servia, M. Michel V. Vouitch, President of His Council of Ministers, Minister for Foreign Affairs, Senator Grand Officer of the Order of Milosh the Great, Grand Cross of the Order of Takovo, Officer of the Order of the White Eagle etc. etc., who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following articles:

Article I.

The Government of the United States and the Government of Servia mutually agree to deliver up persons who, having been charged with or convicted of any of the crimes and offenses specified in the

following article, committed within the jurisdiction of one of the high contracting parties, shall seek an asylum or be found within the territories of the other: Provided, that this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his or her apprehension and commitment for trial if the crime or offense had been committed there.

Article II.

Extradition shall be granted for the following crimes and offenses:

1. Murder, comprehending assassination, parricide, infanticide, and poisoning; attempt to commit murder; manslaughter, when voluntary.

2. Arson.

3. Robbery, defined to be the act of feloniously and forcibly taking from person of another money or goods, by violence or putting him in fear; burglary, defined to be the act of breaking, and entering by night, into the dwelling house of another, with intent to commit felony; housebreaking or shopbreaking.

4. Forgery, or the utterance of forged papers; the forgery or falsification of official acts of government, of public authorities, or of courts of justice, or the utterance of the thing forged or falsified.

5. The counterfeiting, falsifying or altering of money, whether coin or paper, or of instruments of debt created by national, state, provincial, or municipal governments, or of coupons thereof, or

of banknotes, or the utterance or circulation of the same; or the counterfeiting, falsifying or altering of seals, dies or stamps of state; of postage and revenue stamps.

6. Embezzlement by public officers; embezzlement by persons hired or salaried, to the detriment of their employers; larceny; obtaining money, valuable securities or other property by false pretenses, or receiving money, valuable securities or other property, knowing the same to have been embezzled, stolen or fraudulently obtained, when such act is made criminal by the laws of both countries and the amount of money or the value of the property fraudulently obtained or received is not less than two hundred dollars or one thousand francs in gold.

7. Fraud or breach of trust by a bailee, banker, agent, factor, trustee, or other person acting in a fiduciary capacity, or director or member or officer of any company, when such act is made criminal by the laws of both countries and the amount of money or the value of the property misappropriated is not less than two hundred dollars or one thousand francs in gold.

8. Perjury; subornation of perjury.

9. Rape; abduction; kidnapping.

10. Wilful and unlawful destruction or obstruction of railroads which endangers human life.

11. Crimes committed at sea:

a. Piracy, by statute or by the law of nations.

b. Revolt, or conspiracy to revolt, by two or more persons on board a ship on the high seas against the authority of the master.

c. Wrongfully sinking or destroying a vessel at sea, or attempting to do so.

d. Assaults on board a ship on the high seas with intent to do grievous bodily harm.

12. Crimes and offenses against the laws of the United States of America for the suppression of slavery and slave trading.

Extradition is also to take place for participation in any of the crimes and offenses mentioned in this Treaty, provided such participation may be punished in the United States as felony and in Servia as crime or offense as before specified.

Article III.

Requisitions for the surrender of fugitives from justice shall be made by the Governments of the high contracting parties through their diplomatic agents, or in the absence of such through their respective superior consular officers.

If the person whose extradition is requested shall have been convicted of a crime or offense, a duly authenticated copy of the sentence of the Court in which he has been convicted, or if the fugitive is merely charged with crime, a duly authenticated copy of the warrant of arrest in the country where the crime has been committed, and of the depositions or other evidence upon which such warrant was issued, shall be produced.

The extradition of fugitives under the provisions of this Treaty shall be carried out in the United States and in Servia, respectively, in conformity with the laws regulating extradition for the time

being in force in the State on which the demand for surrender is made.

Article IV.

Where the arrest and detention of a fugitive in the United States are desired on telegraphic or other information in advance of the presentation of formal proofs, complaint on oath, as provided by the statutes of the United States, shall be made by an agent of the Government of Servia before a judge or other magistrate authorized to issue warrants of arrest in extradition cases.

In the Kingdom of Servia the diplomatic or consular officer of the United States shall apply to the Foreign Office, which will immediately cause the necessary steps to be taken in order to secure the provisional arrest and detention of the fugitive.

The provisional detention of a fugitive shall cease and the prisoner be released if a formal requisition for his surrender, accompanied by the necessary evidence of criminality, has not been produced under the stipulations of this Treaty, within two months from the date of his provisional arrest and detention.

Article V.

Neither of the high contracting parties shall be bound to deliver up its own citizens or subjects under the stipulations of this Treaty.

Article VI.

A fugitive criminal shall not be surrendered if the offense in respect of which his surrender is demanded be of a political character, or if he proves

that the requisition for his surrender has, in fact, been made with a view to try or punish him for an offense of a political character.

No person surrendered by either of the high contracting parties to the other shall be triable or tried, or be punished, for any political crime or offense, or for any act connected therewith, committed previously to his extradition.

If any questions shall arise as to whether a case comes within the provisions of this article, the decision of the authorities of the Government on which the demand for surrender is made, or which may have granted the extradition, shall be final.

Article VII.

Extradition shall not be granted, in pursuance of the provisions of this Treaty, if legal proceedings or the enforcement of the penalty for the act committed by the person claimed has become barred by limitation, according to the laws of the country to which the requisition is addressed.

Article VIII.

No person surrendered by either of the high contracting parties to the other shall, without his consent, freely granted and publicly declared by him, be triable or tried or be punished for any crime or offense committed prior to his extradition, other than that for which he was delivered up, until he shall have had an opportunity of returning to the country from which he was surrendered.

Article IX.

All articles seized which are in the possession of the person to be surrendered at the time of his apprehension, whether being the proceeds of the crime or offense charged, or being material as evidence in making proof of the crime or offense, shall, so far as practicable and in conformity with the laws of the respective countries, be given up to the Country making the demand, when the extradition takes place. Nevertheless, the rights of third parties with regard to such articles shall be duly respected.

Article X.

If the individual claimed by one of the high contracting parties, in pursuance of the present Treaty, shall also be claimed by one or several other powers on account of crimes or offenses committed within their respective jurisdictions, his extradition shall be granted to the State whose demand is first received: Provided, that the Government from which extradition is sought is not bound by treaty to give preference otherwise.

Article XI.

The expenses incurred in the arrest, detention, examination, and delivery of fugitives under this Treaty shall be borne by the State in whose name the extradition is sought: Provided, that the demanding Government shall not be compelled to bear any expense for the services of such public officers of the Government from which extradition is sought as received a fixed salary; and, provided, that the charge for the services of such public

officers as receive only fees or perquisites shall not exceed their customary fees for the acts or services performed by them had such acts or services been performed in ordinary criminal proceedings under the laws of the country of which they are officers.

The present Treaty shall take effect on the thirtieth day after the date of the exchange of ratifications and shall not act retroactively.

The ratifications of the present Treaty shall be exchanged at Belgrade as soon as possible, and it shall remain in force for a period of six months after either of the contracting Governments shall have given notice of a purpose to terminate it.

In witness whereof, the respective Plenipotentiaries have signed this Treaty in duplicate and have hereunto affixed their seals.

Done at Belgrade this twenty-fifth (twelfth) day of October in the year of our Lord one thousand nine hundred and one.

CHARLES S. FRANCIS. [Seal]

DR. MICHEL VOUITCH. [Seal]

And Whereas the said Treaty has been duly ratified on poth parts, and the ratifications of the two governments were exchanged in the City of Belgrade, on the thirteenth day of May, one thousand nine hundred and two;

Now therefore, be it known, that I, Theodore Roosevelt, President of the United States of America, have caused the said Treaty to be made public, to the end that the same and every article

and clause thereof may be observed and fulfilled with good faith by the United States and the citizens thereof.

In testimony whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington, this seventeenth day of May in the year of our Lord one thousand nine hundred and two, and of the Independence of the United States the one hundred and twenty-sixth.

By the President:

[Seal] THEODORE ROOSEVELT,

JOHN HAY,
Secretary of State.

DEMANDING GOVERNMENT EXHIBIT F

To Whom It May Concern:

I, Vladimir Popovic, Ambassador of the Federal Peoples' Republic of Yugoslavia, officially state herewith that the Treaty between the United States and Serbia for the mutual extradition of fugitives from justice signed at Belgrade on October 25, 1901, and the ratifications of which were exchanged at Belgrade on May 13, 1902, has uninterruptedly been in force between the United States on one side and Serbia, and later Yugoslavia, on the other and that accordingly the provisions of that Treaty are applicable to matters of extradition of fugitives from justice between the United States and

the Federal Peoples' Republic of Yugoslavia.

In testimony whereof I have hereunto caused the seal of the Embassy of the Federal People's Republic of Yugoslavia to be affixed and signed this document at the city of Washington, D.C., USA, this twenty-eighth day of September, 1951.

[Seal] /s/ V. POPOVIC.

Mr. Walker: I am intrigued with Mr. Reynolds' argument that the only treaty in effect is the one with Austria back in 1848, and I can only draw a parallel to some foreign country attempting to extradite a person from California which was taken from Mexico in 1947, I believe it was. Are they compelled to resort to the treaty with Mexico? I hope not.

I quote again—and I will stop with this—from Terlinden v Ames at page 283——

The Court: A parallel under his argument might, on the other hand, be the independent nation of Texas. In other words, his argument was that Croatia and Servia and Slavonia were three independent nations, and when they formed a coalition they did not necessarily or by that treaty they did not assume these treaties, and the United States did not agree to the treaties, although the three nations there were willing to agree.

Mr. Walker: Yet the same situation would be with California, the Independent Republic of California. [297]

At any rate, if I may read one paragraph from

Terlinden vs. Ames, I will close. Reading from page 283:

"Undoubtedly treaties may be terminated by the absorption of powers into other nationalities and the loss of separate existence, as in the case of Hanover and Nassau, which became by conquest incorporated into the Kingdom of Prussia in 1866. Cessation of independent existence rendered the execution of treaties impossible. But where sovereignty in that respect is not extinguished, and the power to execute remains unimpaired, outstanding treaties cannot be regarded as avoided because of impossibility of performance."

Now the maintenance of the government of the Kingdom of Yugoslavia in exile during the period when the independent State of Croatia existed, I believe provides that continuity of existence of a sovereignty, even though during that brief interim period it was impossible to enforce the obligations of the treaty. Nevertheless the obligations did continue.

The Court: Very well. October 22nd at 10:00 o'clock.

(Whereupon, at 5:10 o'clock p.m., an adjournment was taken until 10:00 o'clock a.m., Monday, October 22, 1951.) [298]

October 22, 1951; 10:00 o'clock a.m.

(Other court matters.)

The Clerk: No. 13467, Andrija Artukovic v James J. Boyle.

Mr. O'Connor: Ready.

Mr. Danielson: Ready for the respondent.

Mr. Walker: Ready for the demanding government.

The Court: Does anybody have any further evidence in this case?

Mr. Danielson: The respondent has no further evidence nor authorities.

Mr. O'Connor: No further evidence.

Mr. Walker: No further evidence.

The Court: Do you have any further argument? I notice you have filed a memorandum.

Mr. O'Connor: Yes, your Honor, we do. Originally at the last time we were to have an opportunity to present an argument on the law as to the sufficiency of the pleadings, and that we are prepared to do today. I imagine it will take about 20 minutes.

The Court: Have you any additional points that you have not raised in the memorandum which you filed?

Mr. O'Connor: No. That is the statement of the additional points. [302]

The Court: I notice that you raised the point there that the United States of America cannot be a party to this extradition.

Mr. O'Connor: That is right.

The Court: I have not had an opportunity to read your brief because it was filed late, but I do not recall your citation of any authorities.

Mr. O'Connor: We cite the statute under which the section is brought and that section refers only

to an action being brought by the foreign government.

The Court: If you have no further points, counsel, and while I do not wish to preclude you from presenting any matter, but if you have presented the points you have in your brief I do not see any particular reason in arguing it today. That is to say, to repeat what you have already said.

Mr. O'Connor: Very well. May I have just one minute?

The Court: Yes.

(Conference between counsel.)

Mr. O'Connor: No, we have no other points that we wish to bring up.

The Court: Do you, Mr. Walker?

Mr. Walker: No. I would be glad to submit the matter on the briefs except for one point which I don't think is material, and if I could take just a moment I would like to state my position on it. [303]

The Court: Yes.

Mr. Walker: It is new matter which they sent out.

In the first place, as to the title, I have retitled this at the suggestion of the Commissioner, which seems to be the usual and perhaps the preferable way of titling such an action, but I think it in no way goes to the merits of the matter at all. That is, the title is not part of the complaint in a judicial sense.

Secondly, your Honor, while there is a charge made in the memorandum drawing attention to dis-

crepancies between the original complaint and the amended complaint, I think the amended complaint takes precedence over the original complaint, but there is one matter which is rather embarrassing to me in that the accusation is made that the original complaint charged on information and belief that the accused was duly and legally charged in Yugoslavia with having committed murders. The amended complaint shows the accusation in the indictment dated three or four or five days after the original complaint was filed here. Now that, therefore, is an inaccuracy. But I believe it is an excusable inaccuracy in the original complaint.

As I say, it was on information and belief and I personally thought and had been informed that the warrant had been issued and the accusation filed over there. Actually under 3184 the only allegation which is essential is the charge [304] that the accused committed murders over there, not that he had been formally charged with them, and that is all that is required for the provisional arrest.

I simply want to say that by way of explanation.

The Court: Very well. I will give consideration to the points raised in the briefs. They have just been received, the amended complaint was filed, and I have been actively engaged in the trial of other lawsuits, so I will continue this matter until November 5, at the hour of 10:00 o'clock in the morning, and order the defendant to return at that date and hour unless he is ordered to return in the meantime by an order of this court made upon decision of the petition for the writ. I hope to be able

to have the time to give consideration to the matter promptly and dispose of it now.

Mr. Walker: One other matter, your Honor: At the time of the filing of the amended complaint before the Commissioner, I handed a copy to the court. I wonder if that might show in the record and that the amended complaint be made a part of the record in some formal fashion?

The Court: Yes. It may be filed as an exhibit, Petitioning Government's Exhibit next in order.

Do you have a copy of it there, Mr. Clerk?

The Clerk: Yes. DG-H.

The Court: Very well. [305]

(The document referred to was received in evidence and marked Demanding Government's Exhibit DG-H.)

Mr. Walker: We had two hearings scheduled this morning, one in this court and one before the Commissioner. I wonder if we could adjourn to the Commissioner now. I suppose no order of court is necessary for that.

The Court: No. The defendant was ordered to return to the Commissioner this morning, so that order is still in effect, and he is ordered to return here. He has returned here and he is now released on his present bail until November 5th or further order of the court. The order of the Commissioner of course still stands.

Mr. Walker: Thank you.

(Whereupon, at 10:20 o'clock a.m., an adjournment was taken until 10:00 a.m., Monday, November 5, 1951.) [306]

November 5, 1951; 10:00 o'Clock a.m.

(Other court matters.)

The Clerk: No. 13467, Andrija Artukovic vs. James J. Boyle.

Mr. O'Connor: Ready.

Mr. Danielson: Ready for the respondent.

The Court: That matter was continued until today in the hopes that by that time I would have been able to reach some conclusion in connection with the various problems that arise in this matter.

I have requested counsel since the last hearing to supply certain data which did not seem to be available to me. The petitioner has responded with a letter. I am advised by Mr. Danielson, the United States Attorney, that he is in expectation of receiving some of the data from the Attorney General's office. Has it arrived?

Mr. Danielson: It has not arrived but we are still in expectation.

Mr. Walker: I received my communication from Washington on Saturday morning, and I have it here to present to the court.

The record will show I have served a copy of this on counsel.

The Court: I may say to counsel for the petitioner that [309] I appreciate their diligence and effort, but the questions that I had in mind are still not answered. It is not a question of reaching a

conclusion and I do not know whether or not you have covered it in your memorandum, and obviously I guess Mr. Danielson does not know whether it is covered in the Attorney General's memorandum.

Mr. Walker: I think the questions are not all covered in my memorandum, your Honor. I have supplied you with whatever I was able to get, but it is not a complete answer largely because apparently there is no answer to some of the questions. In other words, there were no communications such as your Honor requested.

The Court: There are two things that are bothering me considerably and have since I talked to counsel, that is, it is the effort to find some data on them: the Treaty of Paris was signed with Germany in June 1919 and submitted to the Senate. Out of that conference grew the Treaty of Hungary, which was signed at Trianon on June 4, 1920, the treaty with Austria was signed September 10, 1919 at Saint-Germain-en-Laye, the one with Czechoslovakia on the same date, a treaty with Poland signed at Versailles on June 28, 1919, a treaty with Rumania signed at Paris December 9, 1919, the treaty with the Serbs, Croats and Slovene States signed at Saint Germain on September 10, 1919, the so-called International Treaty dealing with various subjects likewise [310] signed at Saint Germain on September 9, 1919, a treaty relating to the liquor traffic in Africa signed September 10, 1919 at Saint Germain, a treaty for the control of trade in arms and ammunition likewise signed September 10, 1919.

Now the Serbs, Croats and Slovene State was

designated as a party I believe to most, if not all, of these treaties. Perhaps the exception was the Treaty of Poland. And from the text of the treaties it appears that they participated.

I have been unable to find that any of the treaties I have just designated were ever submitted to the United States Senate for ratification. In fact, the data which is available to me advises that the treaty with the Serbs, Croats and Slovene State was not submitted for ratification, and several of the other treaties were not submitted for ratification.

These were signed before any Senate action upon the Treaty of Serbia. My recollection presently is that the first Senate action on that was in December 1919, when a majority was unable to be secured in the Senate for an affirmative vote on the treaty, and it was not until March 1920 that it was returned to the President without his approval. As a matter of fact, I have not been able to get the full text of the resolution returning the treaty to the President without his approval. I have not had available the report of the Foreign Relations Committee.

I have searched for them in the County Law Library and [311] the Public Library and such other places as has been suggested to me by others where they might be available. But it would seem to me that if the United States and the various powers who were concerned with establishing peace at that time and the many problems involved and covered in these treaties went to the trouble of appointing delegates and going through the obviously long and detailed negotiations which led up to their

signatures, and the fact that some of the other governments who were parties to these treaties did ratify them and deposit their ratifications as parties in accordance with the terms of the treaty, that somewhere in the official history of the United States there must be some statement by either President Wilson or the State Department or some Senator or somebody as to why these treaties were not submitted to the Senate.

I have been unable to find any. I have been unable to find any trace of any in the indices to the various textbooks that deal with the subject of the Treaty of Versailles and various treaties that were negotiated and many which did not go into force with the United States after that first World War.

Now I hope that perhaps counsel will have available some research staff someplace who can have access to the Department of State or the Library of Congress or the Journal of the Senate or have the time available to examine the reports [312] which I understand are long, of the Foreign Relations Committee, both majority and minority, and submitting the treaty of Germany, that is, the Treaty of Versailles, to find some official indication as to why those treaties were not submitted.

I am not concerned with other treaties particularly, except they all appear—well, there were six of them signed at Saint Germain on the same day and I indicate them simply because they may cause a lead as to why the Serbs, Croats and Slovene treaty was not submitted.

However, on the other hand, the Treaty with Aus-

tria and the Treaty with Hungary deal with the boundary lines of the new Serb, Croat and Slovene State. Each of them have separate parts of the treaty consisting of several paragraphs indicating new boundary lines of that state.

The one other thing I am concerned with, and upon which I have been unable to find any data, is this: In Terlinden vs. Ames, and one other case, the name of which escapes my memory at the moment, it was held by the United States Supreme Court that the Treaty with Prussia, an extradition treaty, extended to other parts of Germany. Of course I realize that there was an accession clause in their treaty.

In the proposed treaty, that is to say, the Treaty of Versailles with Germany, there was a special chapter and part dealing with treaties which were to be in force.

If the logic urged by the demanding government and the [313] United States here is correct, then it would seem to me there would have been no necessity for the negotiation of another extradition treaty with Germany in 1930, which was done, as I understand, at Berlin on July 12, 1930, ratified by the Senate January 22, 1931, by the President January 26, 1931, by Germany February 25, 1931, ratifications exchanged at Washington March 6, 1931, and proclaimed by the President April 22, 1931.

Likewise there were other treaties subsequent to the termination of the war with Germany which were renegotiated covering the very identical subjects which had been in force before.

Now perhaps counsel can assist me in research in that connection by again seeking through the Library of Congress or the State Department for some official statement as to why it was necessary to negotiate this extradition treaty in view of the positive declaration by the Supreme Court in Terlinden vs. Ames that the previous treaty executed in 1852, I think it was, was still in force.

I have been unable to find anything in that respect. I simply state that to counsel to indicate to you that if you desire you can have some still further problems of research, and to indicate also that it may save me some considerable effort in research, although I expect to continue to endeavor to find these matters. [314]

All of which comes to this, that the matter of decision on the petition for the writ cannot be made today. I understand that the Commissioner has continued it until December 3rd.

Mr. O'Connor: Subject to further order by the court, your Honor.

The Court: My problem now with this month is that I immediately begin tomorrow in the trial of a patent case, I have to go to Phoenix the following week to try a case; in other words, by my present calendar I will be continuously in court, which will leave me only the evenings and week ends to conduct research on this matter. So I doubt if I can conclude my studies so as to be able to reach a conclusion which the seriousness of this matter deserves by December 3rd.

I can see no harm that can come to the cause of

either party if it were put over until January of next year, which would give me ample opportunity for the searching examination of my own thoughts on it, as well as for such further research as may be necessary.

Mr. O'Connor: Very well.

The Court: Can there be any legal objection to the continuance to January?

Mr. Danielson: The respondent does not object.

Mr. O'Connor: No objection.

Mr. Walker: It seems a rather long period, your Honor. [315] However, I appreciate the problems with which you are faced. I do not wish to enter any formal objection.

The Court: Do counsel wish to submit any authorities on these subjects which I have touched upon?

Mr. O'Connor: Yes.

Mr. Walker: Yes, I will be glad to make an effort to get them.

Mr. Danielson: We will likewise make an effort and supplying what we can obtain, your Honor.

Mr. Walker: It would seem to me that most of this material could be obtained through the State Department by the Department of Justice. At least that seems the more logical channel.

The Court: Of course when it started it seemed to me that it ought to be material on which your hands could be readily laid, but I have examined all the books I can find on the Treaty of Versailles and these other subject matters, the indices not only of this State Department's papers but the British

State Department's papers, and up to now my search has been completely unrewarded. But I just cannot believe that these things would have occurred without somebody in an official position making an explanation to the world, not just to the American people but to the world and the other nations who had entered into these negotiations, as to why nothing was done. [316]

Mr. O'Connor: Your Honor, that will give us an opportunity—Mr. Reynolds is in Washington—to take all the time that is necessary to make as thorough and as complete a research of the State Department's records back there as we can possibly do.

The Court: I will put the matter over until January 14, 1952. The defendant is ordered and directed to be and appear in this courtroom on that date at the hour of 10:00 o'clock in the morning, and is in the meantime enlarged upon his present bail.

I hope that if counsel are going to submit something that you do not submit it on New Year's Eve or Christmas Eve.

Mr. O'Connor: Say we had until December 3rd to present our material?

The Court: Yes, I will fix a date—December 1st to present your material. If you have not completed it by then and will advise me I will see about an enlargement of time.

Also, I want to state to counsel that I am sorry I have been unable to reach any conclusion on the matter but, as I indicated at the beginning, I am

not going to make any precipitous decision in this important case.

Mr. Walker: I am sorry that we have not been able to be of more assistance to the court.

The Court: I realize what handicaps everybody is suffering under in hunting for this material.

Mr. O'Connor: Your Honor, there are two things I would like to call the court's attention to. I would like to call attention to the foreign government, to the order to produce material in the letter from the Yugoslav government which the respondent was ordered to produce and which he has so far not delivered.

The Court: I thought it had been.

Mr. Walker: Not the last one, your Honor. There was a demand made for a copy of a letter back in 1946, and also a copy of another document referred to in a later letter, which was a decision of some commission to investigate into the acts of the occupation forces.

As to that, I am informed that only one copy was sent to the State Department and that is all that was available in this country.

This decision, so-called, was a result, as I understand and as it has been explained to me, and which consists of many, many depositions and long records similar to a court record. Possibly the State Department still has it. There is no other copy or copies of it here and it will take months to produce.

The Court: Mr. Reynolds, I understand, is in Washington. Perhaps he can locate and find the documents and then a demand can be made which

I will entertain on an ex parte motion. [318]

One other thing. I have not had available the minutes of the United Nations to find out when, if at all, Yugoslavia became a member of the United Nations and by what process. Some mention has been made in the argument of the first demand for this petitioner having been not made under a resolution of the United Nations. No one has called my attention to it. Like the indices of these other things, the indices of the matters in the United Nations are exceedingly disorganized in this community. It may be well organized some place else. So I would like also to have those two additional things, that is to say, the entrance of Yugoslavia and any resolution that was made concerning it.

Mr. Walker: Are you referring now to the resolution by which Yugoslavia became a member?

The Court: Became a member of the United Nations. It may have been by joint concert with the other United Nations at the time of the execution of the call. In other words, by whatever means, and the time. And then the time and text of this so-called war criminals resolution.

Mr. Walker: Very well. We will get what we can on that, your Honor. That resolution, I am informed, was introduced by the American delegate.

The Court: Somebody ought to find in the official copies of the records of the United Nations, if Yugoslavia did intend or pretend to act upon it.

Mr. O'Connor: Your Honor please, one more request. Perjury appears on the face of the record and——

The Court: Perjury never appears on the face of the record.

Mr. O'Connor: It does in this case.

The Court: It has to be proved by two witnesses or one witness and corroborating evidence. I have spent too many hours trying perjury cases not to know.

Mr. O'Connor: Would it be possible to request the United States Attorney to examine it and see if there has been perjury committed? This is a pretty serious matter.

The Court: I think that the matter can be deferred until we dispose of this other matter. I do not desire to see this rather intricate matter involved with charges and countercharges which might grow out of that. At the conclusion of this matter, if perjury has been committed, the statute of limitations has not run and it can be dealt with at that time.

Mr. O'Connor: Very well.

The Court: January 14, 1952, at 10:00 o'clock.

(Other court matters.)

[Endorsed]: Filed Sept. 18, 1952. [320]

[Endorsed]: No. 13552. United States Court of Appeals for the Ninth Circuit. Rafo Ivancevic, Consul General of the Federal Peoples' Republic of Yugoslavia, Appellant, vs. Andrija Artukovic, Appellee. James J. Boyle, United States Marshal, Appellant, vs. Andrija Artukovic, Appellee. Tran-

script of Record. Appeals from the United States District Court for the Southern District of California, Central Division.

Filed: September 19, 1952.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 13552

RAFO IVANCEVIC, as Consul General of the Federal Peoples' Republic of Yugoslavia,
Appellant,

vs.

ANDRIJA ARTUKOVIC and JAMES J. BOYLE, as United States Marshal,
Appellees.

APPELLANT'S STATEMENT OF POINTS ON APPEAL

Rafo Ivancevic, as Consul General of the Federal Peoples' Republic of Yugoslavia, appellant herein, presents herewith the following Statement of Points upon which he will rely on appeal:

1. The District Court erred in granting the Writ of Habeas Corpus discharging the petitioner Andrija Artukovic.

2. The District Court erred in finding as a fact

that the Treaty of Extradition between the United States of America and the Kingdom of Serbia of 1902 is not now in force and effect between the United States of America and the Federal Peoples' Republic of Yugoslavia.

3. The District Court erred in its conclusion as a matter of law that the Treaty of Extradition between the United States of America and the Kingdom of Serbia of 1902 is not now in force and effect between the United States of America and the Federal Peoples' Republic of Yugoslavia.

/s/ RONALD WALKER,
Attorney for Appellant

Affidavit of Service by Mail attached.

[Endorsed]: Filed Sept. 23, 1952. Paul P. O'Brien, Clerk.

[Title of U. S. Court of Appeals and Cause.]

APPELLANT'S DESIGNATION OF RECORD FOR PRINTING ON APPEAL.

Rafo Ivancevic, as Consul General of the Federal Peoples' Republic of Yugoslavia, the appellant herein, hereby designates for printing in the record on appeal before the above entitled Court, the following portions of the record, proceedings and evidence:

1. Petition for Writ of Habeas Corpus.

2. Order to Show Cause Why Writ of Habeas Corpus Should Not Issue.

3. Return to Order to Show Cause.

4. Appearance of Rafo Ivancevic, etc.

5. Amended Petition for Writ of Habeas Corpus.

6. Minute Orders of September 17, 19, October 8, 22, November 5, 1951; January 14, February 18, April 7, May 12, and June 9, 1952.

7. Memorandum Opinion filed July 14, 1952.

8. Order Granting Petition for Writ of Habeas Corpus, etc.

9. Notice of Appeal.

10. Statement of Points on Appeal, etc.

11. Designation of Contents of Record.

12. Petitioner's Exhibits 14 and 15-A.

13. Demanding Government's Exhibits DG-B, DG-E, DG-F.

14. Appellant's Designation of Record for Printing.

15. Statement of Points on Appeal. (Filed with Court of Appeals.)

16. Reporter's Transcript of Proceedings for September 17, 19, October 8, 22, 1951, and November 5, 1951, pages 1 to 320 inclusive.

/s/ RONALD WALKER,
Attorney for Appellant

Affidavit of Service by Mail attached.

[Endorsed]: Filed Sept. 23, 1952. Paul P. O'Brien, Clerk.

[Title of U. S. Court of Appeals and Cause.]

APPLICATION FOR USE OF ORIGINAL EXHIBIT IN LIEU OF PRINTING

Ronald Walker, being first duly sworn, deposes and says:

That he is attorney for the above named appellant. The aboye entitled appeal arose from an extradition proceeding commenced by appellant as a consular representative of the Federal Peoples' Republic of Yugoslavia against Andrija Artukovic, appellee herein. A petition for a Writ of Habeas Corpus was filed with the District Court, and the appeal is taken from the order granting such writ. During the pendency of the petition for a Writ of Habeas Corpus, an amended complaint for extradition was filed, a copy of which was received in evidence in the Habeas Corpus proceedings as Exhibit DG-H. Since the amended petition for a Writ of Habeas Corpus raises questions as to the sufficiency of the complaint, said Exhibit DG-H is properly a part of the record on appeal and has been designated by appellant for printing.

The proposed extradition was based upon a treaty between the United States of America and the Kingdom of Serbia, it being the contention of appellant that such treaty was presently in full force and effect as to the present Federal Peoples' Republic of Yugoslavia. The sole question determined by the District Court was that such treaty was not in force and effect, and the question as to the

validity and effectiveness of the treaty is the sole question presented by this appeal.

Said Exhibit DG-H (the amended complaint in extradition) consists of some eighty pages, including twenty-two similar and repetitious counts and the names of 1277 alleged victims, and a translation of an indictment or accusation filed in Yugoslavia in which said 1277 names are repeated.

While said Exhibit DG-H should be available to the Court of Appeals in the event that it is needed for reference, the inclusion of such document in the printed record would needlessly encumber the record with voluminous and repetitious material and lengthy lists of names which have no bearing on the merits of the appeal, and would involve needless expense to appellant.

Affiant has discussed the matter with Vincent G. Arnerich, Esq., one of the attorneys for the Appellee Artukovic, and he has stated to affiant that he has no objection to the non-printing of such document if it remains in the Court of Appeals as part of the record.

/s/ RONALD WALKER

Good cause therefor appearing from the affidavit of Ronald Walker, counsel for appellant, on file herein:

It Is Hereby Ordered: That the original Exhibit DG-H (an Amended Complaint for Extradition) may be used as a part of the record in the above

entitled appeal, in lieu of making such Exhibit DG-H a part of the printed record therein.

Dated: September 25, 1952.

/s/ ALBERT LEE STEPHENS,

/s/ WILLIAM E. ORR,

/s/ HOMER T. BONE,

Judges, U. S. Court of Appeals for the Ninth Circuit

[Endorsed]: Filed Oct. 1, 1952. Paul P. O'Brien, Clerk.

[Title of U. S. Court of Appeals and Cause.]

SUPPLEMENTAL DESIGNATION OF RECORD

Rafo Ivancevic, appellant herein, hereby supplements his previous designation of the record for printing on appeal herein, and in addition to the matter therein set forth, designates for printing the following portions of the records of the action:

1. Notice of Appeal, filed by Respondent James J. Boyle, United States Marshal.

2. Supplemental Designation of Record on Appeal filed October 2, 1952, with the Clerk of the U. S. District Court.

3. This Supplemental Designation of Record for Printing.

/s/ RONALD WALKER,
Attorney for Appellant Rafo Ivancevic, etc.

Affidavit of Service by Mail attached.

[Endorsed]: Filed Oct. 7, 1952. Paul P. O'Brien Clerk.

[Title of U. S. Court of Appeals and Cause.]

STATEMENT OF POINTS ON APPEAL

(For Appellant James J. Boyle)

James J. Boyle, United States Marshal, one of the appellants herein, presents herewith the following Statement of Points upon which he, as Appellant, will rely on appeal:

1. The District Court erred in granting the Writ of Habeas Corpus discharging the Petitioner.

2. The District Court erred in finding as a fact that the Treaty of Extradition between the United States of America and the Kingdom of Serbia in 1902 is not now in force and effect between the United States of America and the Federal Peoples' Republic of Yugoslavia.

3. The District Court erred in its conclusion as a matter of law that the Treaty of Extradition between the United States of America and the Kingdom of Serbia of 1902 is not now in force and effect

between the United States of America and the Federal Peoples' Republic of Yugoslavia.

/s/ RONALD WALKER,

Attorney for Appellant, James J. Boyle, United States Marshal.

Affidavit of Service by Mail attached.

[Endorsed]: Field Oct. 31, 1952. Paul P. O'Brien, Clerk.

[Title of U. S. Court of Appeals and Cause.]

DESIGNATION OF RECORD FOR PRINTING ON APPEAL

(For James J. Boyle, Respondent and Appellant)

James J. Boyle, United States Marshal, one of the appellants herein, hereby designates for printing of the record on appeal herein the following portions of the records of said action:

1. Appellant James J. Boyle adopts and incorporates by reference the material included in the Designation of Record for Printing on Appeal heretofore filed by the Appellant Rafo Ivancevic.

2. Notice of Appeal filed by Respondent James J. Boyle, United States Marshal on September 29, 1952.

3. Substitution of Attorney for Respondent James J. Boyle, filed October 28, 1952.

4. This Designation of Record for Printing.

5. Statement of Points on Appeal filed herewith.

/s/ RONALD WALKER,

Attorney for Appellant James J. Boyle, United States Marshal.

Affidavit of Service by Mail attached.

[Endorsed]: Filed Oct. 31, 1952. Paul P. O'Brien, Clerk.

SECOND SUPPLEMENTAL TRANSCRIPT OF RECORD

In the United States District Court, Southern District of California, Central Division

No. 13467—PH

ANDRIJA ARTUKOVIC, Petitioner,

vs.

JAMES J. BOYLE, United States Marshal, Respondent.

SUBSTITUTION OF ATTORNEY IN SUPPLEMENTAL RECORD

I hereby substitute Ronald Walker in place and stead of Walter S. Binns, United States Attorney, as my attorney in the above entitled proceeding.

Dated: October 28, 1952.

/s/ JAMES J. BOYLE, U. S. Marshal,
/s/ By [Illegible], Chief Deputy,
Respondent

We hereby consent to the foregoing substitution.

WALTER S. BINNS,
United States Attorney,
/s/ CLYDE C. DOWNING,
Assistant United States Attorney

I hereby accept the foregoing substitution.

/s/ RONALD WALKER

Affidavit of Service by Mail attached.

[Endorsed]: Filed Oct. 28, 1952.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO SECOND SUPPLEMENTAL TRANSCRIPT OF RECORD

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing papers are the original Substitution of Attorney, Statement of Points on Appeal and Designation of Contents of Record on Appeal which, together with the material heretofore certified as the record on appeal in the original Transcript of Record and Supplemental Transcript of Record constitute the record on appeal on the Notice of Appeal filed by respondent James J. Boyle, etc.

Witness my hand and the seal of said District Court this 29th day of October, A.D. 1952.

[Seal] EDMUND L. SMITH,

Clerk

/s/ By THEODORE HOCKE,

Chief Deputy.

[Endorsed]: No. 13552. United States Court of Appeals for the Ninth Circuit. Rafo Ivancevic, Consul General of the Federal Peoples' Republic of Yugoslavia, Appellant, vs. Andrija Artukovic, Appellee. James J. Boyle, United States Marshal, Appellant, vs. Andrija Artukovic, Appellee. Supplemental Transcript of Record. Appeals from the United States District Court for the Southern District of California, Central Division.

Filed: October 31, 1952.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

LIBRARY SUPREME COURT

No. 462

No. 15217

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United States
Court of Appeals
for the Ninth Circuit

BRANKO KARADZOLE, Consul General of the Federal People's Republic of Yugoslavia, and ROBERT W. WARE, United States Marshal,

Appellants,

vs.

ANDRIJA ARTUKOVIC,

Appellee.

Transcript of Record
In Two Volumes

Volume II
(Pages 403 to 549)

Appeal from the United States District Court for the Southern District of California, Central Division.

FILED
NOV - 9 1956
PAUL P. O'BRIEN, CLERK

Phillips & Van Orden Co., 870 Brannan Street, San Francisco—9-12-57

No. 15217

United States
Court of Appeals
for the Ninth Circuit

BRANKO KARADZOLE, Consul General of the Federal People's Republic of Yugoslavia, and ROBERT W. WARE, United States Marshal,

Appellants,

vs.

ANDRIJA ARTUKOVIC,

Appellee.

Transcript of Record
In Two Volumes

Volume II
(Pages 403 to 549)

Appeal from the United States District Court for the Southern District of California, Central Division.

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.—10-12-56

NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

RONALD WALKER,
1024 Rowan Building,
458 South Spring Street,
Los Angeles, California.

For Appellee:

EDWARD J. O'CONNOR,
530 West Sixth Street,
Los Angeles, California;

VINCENT G. ARNERICH,
639 South Spring Street,
Los Angeles, California.

EXHIBIT DG-H

In the District Court of the United States, Southern District of California, Central Division

No. 9-283

UNITED STATES OF AMERICA, ex rel. RAFO IVANCEVIC,

Complainant,

vs.

ANDRIJA ARTUKOVIC, Alias Alois Anich,

Defendant.

AMENDED COMPLAINT ON EXTRADITION

To the Honorable United States Commissioner:

Your complainant, Rafo Ivancevic, under oath deposes and says:

First Count

I.

That your complainant is the Consul General of the Federal People's Republic of Yugoslavia at San Francisco, California, in the United States of America; that in the above-entitled matter complainant acts for and on behalf of the Government of the Federal People's Republic of Yugoslavia.

II.

That Andrija Artukovic, alias Alois Anich, is within the Southern District of California.

III.

That a Treaty of Extradition is presently in force and effect between the United States and the Federal People's Republic of Yugoslavia; to wit, the Extradition Treaty proclaimed May 17, 1902 between the Kingdom of Serbia and the United States of America (32 Stats., Part 2, 1890).

IV.

That said Andrija Artukovic, alias Alois Anich, is not a citizen of the United States of America.

V.

That Andrija Artukovic did commit within the jurisdiction of the Federal People's Republic of Yugoslavia a crime; to wit, murder, for which extradition is provided by such Treaty of Extradition.

VI.

That an accusation charging Andrija Artukovic with said crime of murder has been filed in the County Court of Zagreb in the People's Republic of Croatia, Federal People's Republic of Yugoslavia, and that a warrant for the arrest of said Andrija Artukovic has been duly issued from said court.

A photostatic copy of the English translation of said accusation (indictment) and a photostatic copy of said warrant are attached hereto, marked Exhibit "A" and Exhibit "B" respectively, and by this reference made a part hereof as though fully set forth herein, and that copies of said accusation (indictment) and warrant, together with English

translations thereof, duly certified, each properly and legally authenticated and bearing the certificate of the principal diplomatic officer of the United States resident in the Federal People's Republic of Yugoslavia, all as required by Title 18 U.S.C., Section 3190, are on file with the Honorable United States Commissioner for the Southern District of California.

VII.

That prior to the filing of said Accusation and on a day in the summer of the year 1941, said Andrija Artukovic did willfully, deliberately and with premeditation murder at the concentration camp in Kerestinec within the jurisdiction of said County Court of Zagreb, Petar Zimonjic, the Archbishop of Sarajevo.

Second Count

I.

Complainant incorporates herein each and all of the allegations contained in Paragraphs I, II, III, IV and VI of the First Count hereof and by this reference makes said allegations a part hereof as though fully set out herein.

II.

That Andrija Artukovic did commit within the jurisdiction of the Federal People's Republic of Yugoslavia a crime; to wit, participation in a murder, which said participation is a felony and is punishable as such within the State of California in the United States of America.

III.

That prior to the filing of said Accusation and on a day in the summer of the year 1941 said Andrija Artukovic did willfully, deliberately and with premeditation participate in the murder of Petar Zimonjic, the Archbishop of Sarajevo, at the concentration camp in Kerestinec within the jurisdiction of said County Court of Zagreb.

Third Count

I.

Complainant incorporates herein each and all of the allegations contained in Paragraphs I, II, III, IV, V and VI of the First Count hereof, and by this reference makes said allegations a part hereof as though fully set out herein.

II.

That prior to the filing of said Accusation and on or about June 27, 1941, said Andrija Artukovic did willfully, deliberately and with premeditation murder, within the jurisdiction of said County Court of Zagreb, Miho Vreca, Branko Popovic, Veljko Popovic, Savo Jovicevic, Scepo Jovicevic, Mitar Bogdanovic, Ilija Popovic, Ilija Kurilic, Jefto Kurilic, Savo Bogdanovic, Branko Radan, Pero Biberdzic, Medjo Radojevic, Dragan Ruzic, Djordje Kasikovic, Miro Micevic and his wife, Bosiljka Micevic, Miho Ruzic, Sardjo Ruzic and the 12-year-old brother of Pero Drapic, whose first name is unknown, Djerdka Kojo, her daughters,

Dragica Kojo and Milena Kojo, and her son Miro Kojo.

Fourth Count

I.

Complainant incorporates herein each and all of the allegations contained in Paragraphs I, II, III, IV and VI of the First Count hereof, and Paragraph II of the Second Count hereof, and by this reference makes said allegations a part hereof as though fully set out herein.

II.

That prior to the filing of said Accusation and on or about June 27, 1941, said Andrija Artukovic did willfully, deliberately and with premeditation participate in the murder within the jurisdiction of said County Court of Zagreb, of Miho Vreca, Branko Popovic, Veljko Popovic, Savo Jovicevic, Scepo Jovicevic, Mitar Bogdanovic, Ilija Popovic, Ilija Kurilic, Jefto Kurilic, Savo Bogdanovic, Branko Radan, Pero Biberdzic, Medjo Radojevic, Dragan Ruzic, Djordje Kasikovic, Miro Mecevic and his wife, Bosiljka Micevic, Miho Ruzic, Sardjo Rusic and the 12-year-old brother of Pero Drapic, whose first name is unknown, Djerdja Kojo, her daughters Dragica Kojo and Milena Kojo, and her son Miro Kojo.

Fifth Count

I.

Complainant incorporates herein each and all of the allegations in Paragraphs I, II, III, IV, V and

VI of the First Count hereof, and by this reference makes said allegations a part hereof as though fully set out herein.

II.

That prior to the filing of said Accusation and in June, 1941, said Andrija Artukovic did willfully, deliberately and with premeditation murder, within the jurisdiction of said County Court of Zagreb, Bogdan Popovic, Novak Savic, Todor Starovic, Veljko Visnjevic, Pero Visnjevic, Grujo Visnjevic, Gligor Kosutic, Rado Kosovic, the Greek Orthodox priest Vidak Visnjevic, Todor Milosevic, Veljko Visnjevac, Novica Visnjevic, Vlado Jeftanovic, Spasoje Bukvic, Savo Jeftanovic, Raleta Kosutic, Risto Miletic, Vidak Roncevic, Doro Govedarica, Milica Visnjevic, Jovo Janjic, Arsen Miletic, Golub Bjelica, Milija Bjelica, Stanisa Dumnic, Todor Irkija, Novak Jaksic, Nikola Srovic, Rudovan Sorovic, Blagoje Sarovic, Spasenija Popovic and three children aged from 1 to 5 years, first names unknown, Vaso Popovic, his wife Jela Popovic and six children aged from 1 to 10 years, first names unknown, Mitar Popovic and his wife Mara Popovic. Jovan Boljanovic and his daughter Ljubica Boljanovic, Trifko Zlatanic and his seven children, aged from 1 to 14 years, whose first names are unknown, and his daughter-in-law Danica Zlatanic.

Sixth Count

I.

Complainant incorporates herein each and all of the allegations contained in Paragraphs I, II, III,

IV and VI of the First Count hereof, and Paragraph II of the Second Count hereof, and by this reference makes said allegations a part hereof as though fully set out herein.

II.

That prior to the filing of said Accusation and in June, 1941, said Andrija Artukovic did willfully, deliberately and with premeditation participate in the murder, within the jurisdiction of said County Court of Zagreb, of Bogdan Popovic, Novak Savic, Todor Starovic, Veljko Visnjevic, Pero Visnjevic, Grujo Visnjevic, Gligor Kosutic, Rado Kosovic, the Greek Orthodox Priest Vidak Visnjevic, Todor Milosevic, Veljko Visnjevic, Novica Visnjevic, Vlado Jeftanovic, Spasoje Bukoc, Savo Jeftanovic, Raleta Kosutic, Risto Miletic, Vidak Roncevic, Doro Govedarica, Milica Visnjevic, Jovo Janjic, Arsen Miletic, Golub Bjelica, Milija Bjelica, Stanisa Dumnic, Todor Irkija, Novak Jaksic, Nikola Srovic, Rudovan Sorovic, Blagoje Sarovic, Spasenija Popovic and three children, aged from 1 to 5 years, first names unknown, Vaso Popovic, his wife, Jela Popovic and six children, aged from 1 to 10 years, first names unknown, Mitar Popovic and his wife Mara Popovic, Jovan Boljanovic and his daughter Ljubica Boljanovic, Trifko Zlatanic and his seven children, aged from 1 to 14 years, first names unknown, and his daughter-in-law Danica Zlatanic.

Seventh Count

I.

Complainant incorporates herein each and all of the allegations contained in Paragraphs I, II, III, IV, V and VI of the First Count hereof, and by this reference makes said allegations a part hereof as though fully set out herein.

II.

That prior to the filing of said Accusation and on or about June 22, 1941, said Andrija Artukovic did willfully, deliberately and with premeditation murder, within the jurisdiction of said County Court of Zagreb, Pilja Boljanovic, his two sons whose first names are unknown, his daughter Rilica Boljanovic and her two months old baby and seven more members of this family, whose names are unknown, Spiro Boljanovic, his wife Cvijeta Boljanovic, his mother Rosa Boljanovic, 90 years of age, and his sons Marto Boljanovic, 10 years old, and Bosko Boljanovic, 3 years old, and his two daughters, whose names are unknown, the whole family Nikolic, first names unknown, Panta Rundovic, Bora Cukovic, Risto Djuric.

Eighth Count

I.

Complainant incorporates herein each and all of the allegations contained in Paragraphs I, II, III, IV and VI of the First Count hereof, and Paragraph II of the Second Count hereof, and by this

reference makes said allegations a part hereof as though fully set out herein.

II.

That prior to the filing of said Accusation and on or about June 22, 1941, said Andrija Artukovic did willfully, deliberately and with premeditation participate in the murder, within the jurisdiction of said County Court of Zagreb, of Spiro Boljanovic, his wife Cvijeta Boljanovic, his mother Rosa Boljanovic, 90 years of age, and his sons, Marto Boljanovic, 10 years old, and Rosko Boljanovic, 3 years old, and his two daughters, whose names are unknown, the whole family Nikolic, first names unknown, Panta Rundovic, Bora Cukovic and Risto Djuric.

Ninth Count

I.

Complainant incorporates herein each and all of the allegations contained in Paragraphs I, II, III, IV, V and VI of the First Count hereof, and by this reference makes said allegations a part hereof as though fully set out herein.

II.

That prior to the filing of said Accusation and in June, 1941, said Andrija Artukovic did willfully, deliberately and with premeditation murder, within the jurisdiction of said County Court of Zagreb, Rado Kosovic, Gligor Kosutic, Rado Govedarica, Mitar Govedarica, his wife Petra Govedarica, their son Anto Govedarica, 12 years of age, their daugh-

ters Boba Govedarica, 18, and Andja Govedarica, 16 years of age, and two more small children whose first names are unknown, Petar Govedarica's mother, whose name is unknown, Vule Bijelogrlic, his wife Anja Bijelogrlic and their seven children: Nada Bijelogrlic, 20 years old, Petra Bijelogrlic, 17 years old, Zarko Bijelogrlic, 14 years old, and four small children, whose names and ages are unknown; Jovo Govedarica and his 18 year old daughter, whose name is unknown, Orthodox Priest Vladimir Gvozdenovic, Branko Cerejkovic and his brother, whose name is unknown, two brothers Anovic, first names unknown, Jovo Oborina, 5 Orthodox Priests of the Monastery Zitomislic, Kostar District, the Hieromonarch Dositej Vukicevic, Konstantin Vucurovic, and Makarijo Pejak and the Deacons Marko Bilanovic and Mark Prodanevic, Dusan Konad, Trifko Trklja, Djubo Sain.

Tenth Count

I.

Complainant incorporates herein each and all of the allegations contained in Paragraphs I, II, III, IV and VI of the First Count hereof, and Paragraph II of the Second Count hereof, and by this reference makes said allegations a part hereof as though fully set out herein.

II.

That prior to the filing of said Accusation and in June, 1941, said Andrija Artukovic did willfully,

deliberately and with premeditation participate in the murder, within the jurisdiction of said County Court of Zagreb, of Rado Kosovic, Gligor Kosutic, Rado Govedarica, Mitar Govedarica, his wife Petra Govedarica, their son Anto Govedarica, 12 years of age, their daughters Boba Govedarica, 18, and Andja Govedarica, 16 years of age, and two small children whose first names are unknown, Petar Govedarica's mother, whose name is unknown, Vule Bijelogrlic, his wife Anja Bijelogrlic and their seven children: Nada Bijelogrlic, 20 years old, Petra Bijelogrlic, 17 years old, Zarko Bijelogrlic, 14 years old, and four small children, whose names and ages are unknown; Jovo Govedarica and his 18-year-old daughter, whose name is unknown, Orthodox Priest Vladimir Gvozdenovic, Branko Cerejkovic and his brother, whose name is unknown, two brothers Anovic, first names unknown, Jovo Oborina, 5 Orthodox Priests of the Monastery Zitomislic, Kostar District, the Hieromonarch Dositej Vukicevic, Kon Konstantin Vucurovic and Makarijo Pejak and the Deacons Marko Bilanovic and Mark Prodanovic, Dusan Komad, Trifko Trklja, and Djubo Sain.

Eleventh Count

I.

Complainant incorporates herein each and all of the allegations contained in Paragraphs I, II, III, IV, V and VI of the First Count hereof, and by

this reference makes said allegations a part hereof as though fully set out herein.

II.

That prior to the filing of said Accusation and in August, 1941, said Andrija Artukovic did willfully, deliberately and with premeditation murder, within the jurisdiction of said County Court of Zagreb, Bozica Bulut, 37 years of age, Vasilje Bulut, 11 years of age Milena Bulut, 14 years of age, Mara Bulut, 19 years of age, and a five months old baby, Draginja Bulut, Djurdja Bulut, 65 years of age, one-year-old baby Slavka Bulut, Bojo Medic and two small children, whose names are unknown, Soka Dragicevic, Djuro Keso, Savo Bulut, Danilo Bulut, Vaso Bulut, Bosiljka Dragicevic, the wife of Bogdan Medan, who was with child, Todor Moro, Pero Bekan, Lazo Bekan, Rade Bekan and Arsto Moro.

Twelfth Count

I.

Complainant incorporates herein each and all of the allegations contained in Paragraphs I, II, III, IV and VI of the First Count hereof, and Paragraph II of the Second Count hereof, and by this reference makes said allegations a part hereof as though fully set out herein.

II.

That prior to the filing of said Accusation and in August, 1941, said Andrija Artukovic did willfully, deliberately and with premeditation participate in

the murder, within the jurisdiction of said County Court of Zagreb, of Bozica Bulut, 37 years of age, Vasilje Bulut, 11 years of age, Milena Bulut, 14 years of age, Mara Bulut, 19 years of age, and a five months old baby, Draginka Bulut, Djurdja Bulut, 65 years of age, one-year-old baby Slavka Bulut, Bojo Medic and two small children, whose names are unknown, Soka Dragicevic, Djuro Keso, Savo Bulut, Danilo Bulut, Vaso Bulut, Bosiljka Dragicevic, the wife of Bogdan Medan, who was with child, Todor Moro, Pero Bekan, Lazo Bekan, Rade Bekan and Arsto Moro.

Thirteenth Count

I.

Complainant incorporates herein each and all of the allegations contained in Paragraphs I, II, III, IV, V and VI of the First Count hereof, and by this reference makes said allegations a part hereof as though fully set out herein.

II.

That prior to the filing of said Accusation and on or about July 19 and 20, 1941, said Andrija Artukovic did willfully, deliberately and with premeditation murder, within the jurisdiction of said County Court of Zagreb, Henci Maldibaum, Oskar Maldibaum, Ivo Jerkic, Imsir Gigic, Mesan Sabic, Boro Bilic, Ilija Terzic, Slavko Sipovac, Drago Mandrapa, Veselin Simic, Jasa Santic, Milan Kulidzan, Drasko Pavic, Bato Vulic.

Fourteenth Count

I.

Complainant incorporates herein each and all of the allegations contained in Paragraphs I, II, III, IV and VI of the First Count hereof, and Paragraph II of the Second Count hereof, and by this reference makes said allegations a part hereof as though fully set out herein.

II.

That prior to the filing of said Accusation and on or about July 19 and 20, 1941, said Andrija Artukovic did willfully, deliberately and with premeditation participate in the murder, within the jurisdiction of said County Court of Zagreb, of Henci Maldibaum, Oskar Maldibaum, Ivo Jerkic, Imsir Gigic, Mesan Sabic, Boro Bilic, Ilija Terzic, Slavko Sipovac, Drago Mandrapa, Veselin Simic, Jasa Santic, Milan Kulidzan, Drasko Pavic and Bato Vulic.

Fifteenth Count

I.

Complainant incorporates herein each and all of the allegations contained in Paragraphs I, II, III, IV, V and VI of the First Count hereof, and by this reference makes said allegations a part hereof as though fully set out herein.

II.

That prior to the filing of said Accusation and on or about July 31, and August 1 and 2, 1941, said

Andrija Artukovic did willfully, deliberately and with premeditation murder, within the jurisdiction of said County Court of Zagreb, the carpenter Sefic, the wife of Vojko Vukovic, the daughter and the son of Manolo Popovic, first names unknown, Salko Leric, Andjelka Dakic.

Sixteenth Count

I.

Complainant incorporates herein each and all of the allegations contained in Paragraphs I, II, III, IV and VI of the First Count hereof, and Paragraph II of the Second Count hereof and by this reference makes said allegations a part hereof as though fully set out herein.

II.

That prior to the filing of said Accusation and on or about July 31, and August 1 and 2, 1941, said Andrija Artukovic did willfully, deliberately and with premeditation participate in the murder, within the jurisdiction of said County Court of Zagreb, of the carpenter Sefic, the wife of Vojko Vukovic, the daughter and the son of Manolo Popovic, first names unknown, Salko Leric and Andjelka Dakic.

Seventeenth Count

I.

Complainant incorporates herein each and all of the allegations contained in Paragraphs I, II, III,

IV, V and VI of the First Count hereof, and by this reference makes said allegations a part hereof as though fully set out herein.

II.

That prior to the filing of said Accusation and the end of August or the beginning of September, 1941, said Andrija Artukovic did willfully, deliberately and with premeditation murder, within the jurisdiction of said County Court of Zagreb, Spasoje Bijelanovic, Cvijetin Bjelanovic, Cvijeta Blagojevic and her six months old daughter Zora Blagojevic, Stjepan Todorovic and his wife, first name unknown, Aleksa Majojlovic, Jefo Iljic and his crippled sons Nenad Iljic and Predrag Iljic, Vasilije Radojcic and his wife and three children, up to 14 years of age, first names unknown, Nikola Lukic, 75 years of age, Kosta Lukic, Stanko Malic, Petar Vasiljevic, Milan Soldatovic, Neda Soldatovic, Trivun Soldatovic and Leposava Sarcevic.

Eighteenth Count

I.

Complainant incorporates herein each and all of the allegations contained in Paragraphs I, II, III, IV and VI of the First Count hereof, and Paragraph II of the Second Count hereof and by this reference makes said allegations a part hereof as though set out herein.

II.

That prior to the filing of said Accusation and the end of August or the beginning of September,

1941, said Andrija Artukovic did willfully, deliberately and with premeditation participate in the murder, within the jurisdiction of said County Court of Zagreb, Spasoje Bijelanovic, Cvijetin Bjelanovic, Cvijeta Blagojevic and her six months old daughter Zora Blagojevic, Stjepan Todorovic and his wife, first name unknown, Aleska Manojlovic, Jefo Iljic and his crippled sons Nenad Iljic and Predrag Iljic, Vasilije Radojcic and his wife and three children, up to 14 years of age, first names unknown, Nikola Lukic, 75 years of age, Kosta Lukic, Stanko Malic, Petar Vasiljevic, Milan Soldatovic, Neda Soldatovic, Trivun Soldatovic and Leposava Sarcevic.

Nineteenth Count

I.

Complainant incorporates herein each and all of the allegations contained in Paragraphs I, II, III, IV, V and VI of the First Count hereof, and by this reference makes said allegations a part hereof as though fully set out herein.

II.

That prior to the filing of said Accusation and in May, 1942 said Andrija Artukovic did willfully, deliberately and with premeditation murder, within the jurisdiction of said County Court of Zagreb, Gojko Kikolic, 46 years of age, his wife Soka Kikolic, 44, daughter Zlatica Kikolic, 18, son Jovo Kikolic, 6, daughter Ivanka, 8, and son Dusan, 4 years of age; Petar Nikolic, 78, and his wife, Ljuba Niko-

lic, 74, Paca Nikolic, 52, her son Emil Nikolic, 30, daughter Nada Nikolic, 28, daughter-in-law Zorka Nikolic, 26, and granddaughter Nada, who was just born; Stevo Nikolic, 59, Stevo Nikolic, called Pista, 46, his wife, Ruza Nikolic, 39, their son Milan Nikolic, 9, son Sreto Nikolic, 7, son Savo Nikolic, 3, son Toso Nikolic, 6 months, and daughter Soka Nikolic, 5 years of age; Milan Nikolic, 48, his wife, Milka Nikolic, 48, daughter Dusanka Nikolic, 8, son Vaso Nikolic, 3, and son Rade Nikolic, 1½; Milos Nikolic, 66 years of age, his wife Sovra Nikolic, son Sovro Nikolic, 38, daughter-in-law Danica Nikolic, 36, grandchild Soka Nikolic, 8, grandchild Krista, 5, grandchild Ilija, 3, and grandchild Stevo Nikolic, 1 year of age; Soka Nikolic, 60, son Mirko Nikolic, 31, daughter Smilja Nikolic, 17, daughter Zlatica Nikolic, 14, daughter Milica Nikolic, 11, daughter-in-law Julka Nikolic, 31, granddaughter Ivanka Nikolic, 5, and grandson Mladen Nikolic, 3 years of age; Mito Nikolic, 39, his wife Marta Nikolic, 25, daughter Budimka Nikolic, 5, and son Milos Nikolic, 1 year old; Borko Nikolic, 30, his wife Julka Nikolic, 30, son Ser je Nikolic, 14, and daughter Jelka Nikolic, 1 year of age; Stevo Nikolic, 48, his wife Mica Nikolic, 46, son Milenko Nikolic, 12, son Branko Nikolic, 10, son Jovo Nikolic, 6, and son Milan Nikolic, 2 years of age; Savo Nikolic, 50, his wife Soka Nikolic, 50, son Dejan Nikolic, 30, son Milenko Nikolic, 28, daughter Jelka Nikolic, 25, son Branko Nikolic, 20, son Djuro Nikolic, 5, son Bosko Nikolic, 3, daughter Bojanka Nikolic, several months old and daughter-in-law Mara Nikolic, 26

years old; Blagoje Nikolic, 44, his wife Stana Nikolic, 25, son Nikola Nikolic, 6, and son Djordje Nikolic, 1 year old; Stevo Nikolic, 42, Dragan Nikolic, 67, his wife Goluba Nikolic, 67, son Djordje Nikolic, 29, daughter Zlatica Nikolic, 24, daughter-in-law Zorka Nikolic, 19, and grandchild Paca Nikolic, 6 months old; Momcilo Nikolic, 32, his wife Ljubica Nikolic, 31, son Vidoje Nikolic, 3, and daughter Milanka Nikolic, several months old; Smilja Nikolic, 64, son Rade Nikolic, 31, daughter-in-law Evica Nikolic, 30, and granddaughter Paca Nikolic, 6 months old; Milan Nikolic, 59, his wife Ranka Nikolic, 47, son Ivo Nikolic, 28, and daughter Ivanka Nikolic, 3 years old; Sreto Nikolic, 55, son Dusan Nikolic, 21, Dusan's wife Zlatica Nikolic, 23, grandson Pero Nikolic, 6, and grandson Pajo Nikolic, 4; Momcilo Zlatarev, 36, his wife, Jela Zlatarev, 37, son Ivan Zlatarev, 19, son Milovan Zlatarev, 17, daughter Sofija Zla Tarev, 14, son Stevo Zlatarev, 13, daughter Danica Zlatarev, 12, daughter Bozica Zlatarev, 4, and Mara Zlatarev 55 years old; Misko Nikolic, 60, his wife Sultana Nikolic, about 60, her son Stevo Jovanovic, 35, his wife Bela Jovanovic, 30, and their 8 children between 2 and 20 years of age; first names unknown; Raco Nikolic, 21, his wife Seca Nikolic, 19, and their two small children, first names unknown; Milan Nikolic, 16, his wife and their small child, first names unknown; Pero Nikolic, 58, his wife Mila Nikolic, 55, son Djuro Nikolic, 35, daughter-in-law Kosana Nikolic, 30, granddaughter Ljuba Nikolic, 14, and grandson

Pero Nikolic, 8; Bozo Nikolic, 21, his wife Ruza Nikolic, 19, and their small child, first name unknown; Milos Nikolic, 38, his wife Sultana Nikolic, 35, son Savo Nikolic, 18, his wife, and children of Milos Nikolic, Milojka Nikolic, 13, Sora Nikolic, 11, Soka Nikolic, 9, and Stevan Nikolic, 5 to 6 years old; Sandor Nikolic, 42, his wife, Stojka Nikolic, 40, son Nebojsa Nikolic, 13-14, daughter Ljuba Nikolic, 12, and two more small children, first names unknown; Dimitrije Djurdjevic, 45, his wife Ruza Djurdjevic, 40, son Nebojsa Djurdjevic, 18, and daughter-in-law Ribica Djurdejevic, about 18; Vitomir Nikolic, 28, his wife Rica Nikolic, 25, daughter Jeca Nikolic, about 6, and one more small child, first name unknown; Vitomir Nikolic's mother Mila Nikolic, 55; Dusan Nikolic, called Guska, 55, Milan Nikolic, 35-40 years of age, Milos Miskovic, about 40, his wife Marija Mickovic, 35, and two children about 10 years old, first names unknown, Joco Mickovic, about 40, Jano Mickovic, about 60, and his wife Marija Mickovic, 58 years of age; Nikola Jovanovic, 46, his wife Ana Jovanovic, 40, son Jovo Jovanovic, 7, son Ljuba Jovanovic, 5, son Mile Jovanovic, 3, and son Savo Jovanovic, 1 year old; Maksim Petrovic, 49, his wife Eva Petrovic, 43 years of age; Zarko Petrovic, 30, his wife Julka Petrovic, 30 years of age; Jovo Radosavljevic, 52, his wife Maca Radosavljevic, 50, son Marko Radosavljevic, 30, daughter Mara Radosavljevic, 22, daughter Ljuba Radosavljevic, 18 years of age; Zarko Radosavljevic, 30, his wife Mara Radosavljevic, 28, and son Mita Radosavljevic, 3 years of age;

Neca Radosavljevic, 25, his wife Mara Radosavljevic, 23, and mother Mulka Radosavljevic, 58 years of age; Bane Petrovic, 60, his wife Seca Petrovic, 59, daughter Mara Petrovic, 35, daughter Ana Petrovic, 18, and son Mile Petrovic, 13 years of age; Ljuboje Petrovic, 60, his wife Ana Petrovic, 57, son Jozo Petrovic, 25; Marko Petrovic, 30, his wife Zorka Petrovic, 28; Mladjan Petrovic, 60, and his wife Julka Petrovic, 57 years old; Mija Petrovic, 60, his wife Duka Petrovic, 59, son Nikola Petrovic, 40, sister-in-law Riba, 35, and grandchildren Mile, 15, Ruza, 12 and Mileva, 10 years of age; Mito Paskuljevic, 35, his wife Bosa Paskuljevic, 32, son Bozo Paskuljevic, 17, son Milan Paskuljevic, 15, daughter Mileva Paskuljevic, 13, daughter Dara Paskuljevic 12, and son Branko Paskuljevic, 10 years old; Ica Stojanovic, 80; his son, Savo Stojanovic, 25; Ika Stojanovic, 45, and his wife Kata Stojanovic, 43 years of age; Sava Stojanovic, 44, his wife Mila Stojanovic, 43, son Marinko, 15, son Djoko, 12, son Branko, 10, daughter Dara, 3, and daughter Milenka, 2 years old; Zivko Petrovic, 44, his wife Kata, 42, and daughter Zorka, 14 years old; Lazo Petrovic, 60, his wife Anka, 57, son Branko, 25, and grandchildren Djoko, 6, and Kata, 2 years old; Sandor Petrovic, 45, his wife, first name unknown, 45, and mother Kata, 80 years old; Miso Radosavljevic, 43, his wife Eva, 43, son Djoko, 13, and daughter Anka, 12 years old; Marko Radosavljevic, 70, his wife Marta, 65; Nikola Radosavljevic, 42, his wife Anka, 42, son Djoko, 16, son Marko, 12, daughter Marta, 10, daughter Ljuba,

9, and daughter Eva, 6 years old; Mijo Radosavljevic, 29, his wife Mileva, 29, daughter Dara, 5, and son Miletá, 3 years old; Sreto Radosavljevic, 20, his wife Ljubica, daughter Seca, 5, and son Djuro, 4 years old; Dragutin Radosavljevic, 35, his wife Milka, 34, son Pero, 12, daughter Zorka, 3, and his mother Maca, 60 years old; Marko Radosavljevic, 25, his wife Ana, 22, son Srboslav, 5, and daughter Ana, 3 years old; Lazo Radosavljevic, 60, his wife Mila, 59 years old; Pero Radosavljevic, 60, and his wife Seca, 58 years old; Stevo Petrovic, 25, his wife Paulina, 23; Ruza Petrovic, 44, and her son Zarko, 16 years old; Ljuboje Petrovic, 25, his wife Mileva, 24, and mother Ljuba, 60 years old; Mila Petrovic, 60, her daughter Bosa, 44, and grandson Bozo, 20 years old; Ilija Radosavljevic, 37, his wife Danica, 35, daughter Ljubica, 16, son Milan, 13, daughter Mara, 6 years of age; Branko Radosavljevic, 25, his wife Zorka, 25, daughter Mara, 12, daughter Jela, 10, daughter Mila, 6, and daughter Ruza, 3 days old; Ilija Petrovic, 80, his wife Mila, 80, son Dragan 26, and daughter-in-law Julka, 23 years old; Dusan Petrovic, 25, his wife Julka, 25, son Djuro, 12, son Branko, 10, and mother Mila, 60 years old; Danisa Petrovic, 28, his wife Julka, 25, brother Branko, 15, and sister Anka, 12 years old; Mito Radosavljevic, 50, his wife Anka, 50, son Ilija, 20, daughter Julka, 20, daughter Mileva 6, and son Bozo, 4 years old; Stevo Petrovic, 70, his wife Mara, 69; Laja Petrovic, 45, his wife Darinka, 43, son Branko, 12, son Marko, 10, and daughter Anka,

8 years of age; Radoje Petrovic, 60, his wife Rosa, 60, son Mito, 25, and Mara, 20 years of age; Tanasije Petrovic, 30, his wife Seca, 29, son Zlatko, 13, daughter Marinka, 10, and daughter Ruza, 8 years of age; Slavko Petrovic, 60, his wife Femka, 50, and sister Milka, 44 years of age; Mirko Radosavljevic, 60, his wife Ljuba, 58, son Marinko, 12, and daughter Mileva, 7 years old; Mileva Radosavljevic, 60, son Branko, 17, and son Djuro, 13 years of age; Risto Radosavljevic, 44, his wife Danica, 43, and son Slavko, 19 years of age; Kosra Radosavljevic, 28, his wife Katica, 25, daughter Milinka, 12, and daughter Dara, 6 years of age; Pavo Radosavljevic, 60, his wife Anka, 60 years of age; Dusan Radosavljevic, 60, his wife Anica, 60, son Zlatko, 24, daughter Mileva, 20, son Ljubo, 10, and son Branko, 8 years old; Aga Petrovic, 45, her son Branko Petrovic, 19, son Ivo, 20, and daughter-in-law Dara Petrovic, 19, and Ljuba Petrovic, 20 years of age; Mile Radosavljevic, 44, his wife Danica, 40, son Branko, 16, daughter Paulina, 16, and son Zlatko, 3 years old; Pavo Radosavljevic, 44, and his wife Ljuba, 44; Zliven Mitrovic, 70, and his wife Soka, 60 years old; Dusan Radosavljevic, 45, and his wife Slavka, 17; Nikola Radosavljevic, 45, and his wife Mila, 40, son Pavo, 19, son Mile, 17, son Rade, 14, son Djuro, 13, daughter Ruza, 12, daughter Mileva, 8, and daughter Zorka, 6 years old; Mijo Radosavljevic, 60, his wife Draga, 55, son Marko, 19, son Rade, 17, and son Jovo, 13 years of age; Milan Paskuljevic, 44, his wife Ljubica, 40, son Slavko, 19, and daughter Danica, 17 years of age; Pero Paskul-

jevic, 50, and his wife Roza, 46 years old; Jole Stojanovic, 43, his wife Julka, 40, and son Zarko, 12 years of age; Ivan Stojanovic, 55, his wife Eva, 50, son Dane, 24, and daughter Jela, 19 years of age; Dmitar Stojanovic, 48, his wife Eva, 45, daughter Mica, 25, daughter Anaa, 20, daughter Kaja, 20, and son Toso, 17 years old; Ivan Stojanovic, 49, his wife Zorka, 45, son Branko, 23, daughter Desanka, 22, daughter Slavica, 18 years old; Adam Nikolic, 48, his wife Roza, 45, son Stevo, 20, daughter Slavica, 18, and mother Anka Nikolic, 67 years old; Leposava Stojanovic, 70, her son Ilja, 30, son Stevo, 20, her brother Mladjko Stojanovic, 60, his wife Savka, 55, and the granddaughter of Leposava Stojanovic, Eva, 5 years old.

Twentieth Count

I.

Complainant incorporates herein each and all of the allegations contained in paragraphs I, II, III, IV and VI of the First Count hereof, and paragraph II of the Second Count hereof and by this reference makes said allegations a part hereof as though set out herein.

II.

That prior to the filing of said Accusation and in May, 1942 said Andrija Artukovic did willfully, deliberately and with premeditation participate in the murder, within the jurisdiction of said County Court of Zagreb, of Gojko Kikolic, 46 years of age, his wife Soka Kikolic, 44, daughter Zlatica Kikolic,

13, son Jovo Kikolic, 6, daughter Ivanka, 8, and son Dusan, 4 years of age; Petar Nikolic, 78, and his wife, Ljuba Nikolic, 74, Paca Nikolic, 52, her son Emil Nikolic, 30, daughter Nada Nikolic, 28, daughter-in-law Zorka Nikolic, 26, and granddaughter Nada, who was just born; Stevo Nikolic, 59, Stevo Nikolic, called Pista, 46, his wife Ruza Nikolic, 39, their son Milan Nikolic, 9, son Sreto Nikolic, 7, son Savo Nikolic, 3, son Toso Nikolic, 6 months, and daughter Soka Nikolic, 5 years of age; Milan Nikolic, 48, his wife Milka Nikolic, 48, daughter Dusanka Nikolic, 8, son Vaso Nikolic, 3, and son Rade Nikolic, 1½; Milos Nikolic, 66 years of age, his wife Sovra Nikolic, son Sovron Nikolic, 38, daughter-in-law Danica Nikolic, 36, grandchild Soka Nikolic, 8, grandchild Krista, 5, grandchild Ilija, 3, and grandchild Stevo Nikolic, 1 year of age; Soka Nikolic, 60, son Mirko Nikolic, 31, daughter Smilja Nikolic, 17, daughter Zlatica Nikolic, 14, daughter Milica Nikolic, 11, daughter-in-law Julka Nikolic, 31, granddaughter Ivanka Nikolic, 5, and grandson Mladen Nikolic, 3 years of age; Mito Nikolic, 39, his wife Marta Nikolic, 25, daughter Budimka Nikolic, 5, and son Milos Nikolic, 1 year old; Borka Nikolic, 30, his wife Julka Nikolic, 30, son Sergije Nikolic, 14, and daughter Jelka Nikolic, 1 year of age; Servo Nikolic, 48, his wife Mica Nikolic, 46, son Milenko Nikolic, 12, son Branko Nikolic, 10, son Jovo Nikolic, 6, and son Milan Nikolic, 2 years of age; Savo Nikolic, 50, his wife Soka Nikolic, 50, son Dejan Nikolic, 30, son Milenko Nikolic, 29, daughter Jelka Nikolic, 25, son Branko

Nikolic, 20, son Djuro Nikolic, 5, son Bosko Nikolic, 3, daughter Bojanka Nikolic, several months old and daughter-in-law Mara Nikolic, 26 years old; Blagoje Nikolic, 44, his wife Stana Nikolic, 25, son Nikola Nikolic, 6, and son Djordje Nikolic, 1 year old; Stevo Nikolic, 42, Dragan Nikolic, 67, his wife Goluba Nikolic, 67, son Djordje Nikolic, 29, daughter Zlatica Nikolic, 24, daughter-in-law Zorka Nikolic, 19, and grandchild Paca Nikolic, 6 months old; Momcilo Nikolic, 32, his wife Ljubica Nikolic, 31, son Vidoje Nikolic, 3, and daughter Milanka Nikolic, several months old; Smilja Nikolic, 64, son Rade Nikolic, 31, daughter-in-law Evica Nikolic, 30, and granddaughter Paca Nikolic, 6 months old; Milan Nikolic, 59, his wife Ranka Nikolic, 47, son Ivo Nikolic, 28, and daughter Ivanka Nikolic, 3 years old; Sreto Nikolic, 55, son Dusan Nikolic, 21, Dusan's wife Zlatica Nikolic, 23, grandson Pero Nikolic, 6, and grandson Pajo Nikolic, 4; Momcilo Zlatarev, 36, his wife Jela Zlatarev, 37, son Ivan Zlatarev, 19, son Milovan Zlatarev, 17, daughter Sofija Zlatarev, 14, son Stevo Zlatarev, 13, daughter Danica Zlatarev, 12, daughter Bozica Zlatarev, 4, and Mara Zlatarev, 55 years old; Misko Nikolic, 60, his wife, Sultana Nikolic, about 60, her son Stevo Jovanovic, 35, his wife, Bela Jovanovic, 30, and their 8 children between 2 and 20 years of age, first names unknown; Racv Nikolic, 21, his wife Seca Nikolic, 19, and their two small children, first names unknown; Milan Nikolic, 16, his wife and their small child, first names unknown; Pero Niko-

lic, 58, his wife Mila Nikolic, 55, son Djuro Nikolic, 35, daughter-in-law Kosana Nikolic, 30, granddaughter Ljuba Nikolic, 14, and grandson Pero Nikolic, 8; Bozo Nikolic, 21, his wife Ruza Nikolic, 19, and their small child, first name unknown; Milos Nikolic, 38, his wife Sultana Nikolic, 35, son Savo Nikolic, 18, his wife, and children of Milos Nikolic, Milojka Nikolic, 13, Sora Nikolic, 11, Soka Nikolic, 9, and Stevan Nikolic, 5 to 6 years old; Sandor Nikolic, 42, his wife, Stojka Nikolic, 40, son Nebojsa Nikolic, 13-14, daughter Ljuba Nikolic, 12, and two more small children, first names unknown; Dimitrije Djurdjevic, 45, his wife Ruza Djurdjevic, 40, son Nebojsa Djurdjevic, 18, and daughter-in-law Ribica Djurdejevic, about 18; Vitomir Nikolic, 28, his wife Rica Nikolic, 25, daughter Jeca Nikolic, about 6, and one more small child, first name unknown; Vitomir Nikolic's mother Mila Nikolic, 55; Dusan Nikolic, called Guska, 55, Milan Nikolic, 35-40 years of age, Milos Miskovic, about 40; his wife Marija Mickovic, 35, and two children about 10 years old, first names unknown, Joco Mickovic, about 40, Janos Mickovic, about 60, and his wife Marija Mickovic, 58 years of age; Nikola Jovanovic, 46, his wife Anna Jovanovic, 40, son Jovo Jovanovic, 7, son Ljubo Jovanovic, 5, son Mile Jovanovic, 3, and son Savo Jovanovic, 1 year old; Maksim Petrovic, 49, his wife Eva Petrovic, 43 years of age; Zarko Petrovic, 30, his wife Julka Petrovic, 30 years of age; Jovo Radosavljevic, 52, his wife Maca Radosavljevic, 50, son Marko Radosavljevic, 30, daughter Mara Radosavljevic, 22,

daughter Ljuba Radosavljevic, 18 years of age; Zarko Radosavljevic, 30, his wife Mara Radosavljevic, 28, and son Mita Radosavljevic, 3 years of age; Neca Radosavljevic, 25, his wife Mara Radosavljevic, 23, and mother Milka Radosavljevic, 58 years of age; Bane Petrovic, 60, his wife Seca Petrovic, 59, daughter Mara Petrovic, 35, daughter Ana Petrovic, 18, and son Mile Petrovic, 13 years of age; Ljuboje Petrovic, 60, his wife Ana Petrovic, 57, son Jozo Petrovic, 25; Marko Petrovic, 30, his wife, Zorka Petrovic, 28; Mladjan Petrovic, 60, and his wife Julka Petrovic, 57 years old; Mija Petrovic, 60, his wife Duka Petrovic, 59, son Nikola Petrovic, 40, sister-in-law Riba, 35, and grandchildren Mile, 15, Ruza, 12, and Mileva, 10 years of age; Mito Paskuljevic, 35, his wife Bosa Paskuljevic, 32, son Bozo Paskuljevic, 17, son Milan Paskuljevic, 15, daughter Mileva Paskuljevic, 13, daughter Dara Paskuljevic, 12, and son Branko Paskuljevic, 10 years old; Ica Stojanovic, 80; his son Savo Stojanovic, 25; Ika Stojanovic, 45, and his wife Kata Stojanovic, 43 years of age; Sava Stojanovic, 44, his wife, Mila Stojanovic, 43, son Marinko, 15, son Djoko, 12, son Branko, 10, daughter Dara, 3, and daughter Milenka, 2 years old; Zivko Petrovic, 44, his wife Kata, 42, and daughter Zorka, 14 years old; Lazo Petrovic, 60, his wife Anka, 57, son Branko, 25, and grandchildren Djoko, 6, and Kata, 2 years old; Sandor Petrovic, 45, his wife, first name unknown, 45, and mother Kata, 80 years old; Miso Radosavljevic, 43, his wife Eva, 43, son Djoko, 13, and daughter Anka, 12 years old; Marko

Radosavljevic, 70, his wife Marta, 65; Nikola Radosavljevic, 42, his wife Anka, 42, son Djoko, 16, son Marko, 12, daughter Marta, 10, daughter Ljuba, 9, and daughter Eva, 6 years old; Mijo Radosavljevic, 29, his wife Mileva, 29, daughter Dara, 5, and son Mileta, 3 years old; Sreto Radosavljevic, 20, his wife Ljubica, daughter Seca, 5, and son Djuro, 4 years old; Dragutin Radosavljevic, 35, his wife Milka, 34, son Pero, 12, daughter Zorka, 3, and his mother Maca, 60 years old; Marko Radosavljevic, 25, his wife Ana, 22, son Srboslav, 5, and daughter Ana, 3 years old; Lazo Radosavljevic, 60, his wife Mila, 59 years old; Pero Radosavljevic, 60, and his wife Seca, 58 years old; Stevo Petrovic, 24, his wife Paulina, 23; Ruza Petrovic, 44, and her son Zarko, 16 years old; Ljuboje Petrovic, 25, his wife Mileva, 24, and mother Ljuba, 60 years old; Mila Petrovic, 60, her daughter Bosa, 44, and grandson Bozo, 20 years old; Ilija Radosavljevic, 37, his wife Danica, 35, daughter Ljubica, 16, son Milan, 13, daughter Mara, 6 years of age; Branko Radosavljevic, 25, his wife Zorka, 25, daughter Mara, 12, daughter Jela, 10, daughter Mila, 6, and daughter Ruza, 3 days old; Ilija Petrovic, 80, his wife, Mila, 80, son Dragan, 26, and daughter-in-law Julka, 23 years old; Dusan Petrovic, 25, his wife Julka, 25, son Djuro, 12, son Branko, 10, and mother Mila, 60 years old; Danisa Petrovic, 28, his wife Julka, 25, brother Branko, 15, and sister Anka, 12 years old; Mito Radosavljevic, 50, his wife, Anka, 50, son Ilija, 20, daughter Julka, 20, daughter Mileva, 6, and son

Bozo, 4 years old; Stevo Petrovic, 70, his wife Mara, 69; Laja Petrovic, 45, his wife Darinka, 43, son Branko, 12, son Marko, 10, and daughter Anka, 8 years of age; Radoje Petrovic, 60, his wife Rosa, 60, son Mito, 25, and Mara, 20 years of age; Tanasije Petrovic, 30, his wife Seca, 29, son Zlato, 13, daughter Marinka, 10, and daughter Ruza, 8 years of age; Slavko Petrovic, 60, his wife Femka, 50, and sister Milka, 44 years of age; Mirko Radosavljevic, 60, his wife Ljuba, 58, son Marinko, 12, and daughter Mileva, 7 years old; Mileva Radosavljevic, 60, son Branko, 17, and son Djuro, 13 years of age; Risto Radosavljevic, 44, his wife Danica, 43, and son Slavko, 19 years of age; Kosra Radosavljevic, 28, his wife Katica, 25, daughter Milinka, 12, and daughter Dara, 6 years of age; Pavo Radosavljevic, 60, his wife Anka, 60 years of age; Dusan Radosavljevic, 60, his wife Anica, 60, son Zlatko, 24, daughter Mileva, 20, son Ljubo, 10, and son Branko, 8 years old; Aga Petrovic, 45, her son Branko Petrovic, 19, son Ivo, 20, and daughter-in-law Dara Petrovic, 19, and Ljuba Petrovic, 20 years of age; Mile Radosavljevic, 44, his wife Danica, 40, son Branko, 16, daughter Paulina, 16, and son Zlatko, 3 years old; Pavo Radosavljevic, 44, and his wife Ljuba, 44; Zliven Metrovic, 70, and his wife Soka, 60 years old; Dusan Radosavljevic, 45, and his wife Slavka, 17; Nikola Radosavljevic, 45, and his wife Mila, 40, son Pavo, 19, son Mile, 17, son Rade, 14, son Djuro, 13, daughter Duza, 12, daughter Mileva, 8, and daughter Zorka, 6 years old; Mijo Radosavljevic, 60, his wife Draga, 55, son Marko, 19, son

Rade, 17, and son Jovo, 13 years of age; Milan Paskuljevic, 44, his wife Ljubica, 40, son Slavko, 19, and daughter Danica, 17 years of age; Pero Paskuljevic, 50 and his wife Roza 46 years old; Jole Stojanovic, 43, his wife Julka, 40, and son Zarko, 12 years of age; Ivan Stojanovic, 55, his wife Eva, 50, son Dane, 24, and daughter Jela, 19 years of age; Dmitar Stojanovic, 48, his wife Eva, 45, daughter Mica, 25, daughter Anaa, 20, daughter Kaja, 20, and son Tóso, 17 years old; Ivan Stojanovic, 49, his wife Zorka, 45, son Branco, 23, daughter Desanka, 22, daughter Slavica, 18 years old; Adam Nikolic, 48, his wife Roza, 45, son Stevo, 20, daughter Slavica, 18, and mother Anka Nikolic, 67 years old; Leposava Stojanovic, 70, her son Ilja, 30, son Stevo, 20, her brother Mladjko Stojanovic, 60, his wife Savka, 55, and the granddaughter of Leposava Stojanovic, Eva, 5 years old.

Twenty-first Count

I.

Complainant incorporates herein each and all of the allegations contained in paragraphs I, II, III, IV, V and VI of the First Count hereof, and by this reference makes said allegations a part hereof as though fully set out herein.

II.

That prior to the filing of said Accusation and in the period from the middle of April, 1942, to the beginning of October, 1942, said Andrija Artukovic did wilfully, deliberately and with premeditation

murder, within the jurisdiction of said County Court of Zagreb, Anica Bahan, 3 months old; Salamon Kabiljo, 6 months old; Gita Maestro, 1 year old; Lençika Maestro, child of unknown age; Jakica Koen, 1 year old; Moric Maestro, 10 months old; Ana Kalderon, 1 year and a half old; Rafael Atias, 10 months old; Izi Papo, 1 year old; Josef Klain, 2 years old; Levi Kohen, 2 years old; Josef Macaro, 1 year old; Sida Papo, 1 year old; Samika Azael, 1 year old; Gabrijel Finci, 1 year and a half old; Moric Augenstein, 4 years old; Rena Kabiljo, 2 years old; Regina Finci, 1 year old; Leon Altarac, 6 years old; Rudolph Spirer, 3 years old; Nenz Habinum, 4 years old; Izak Pardo, 1 year old; Robert Altarac, 2 years old; Aro Hent, 3 years old; Lidica Levi, 3 years old; Ruber Guemberger, 10 years old; Rafael Reich, 10 years old; Lea Papo, 4 years old; Moses Bienenfeld, 5 years old; Mihael Bauer, 5 years old; Esperanza Maestro, 1 year old; Marko Salom, 3 years old; Salamon Montiljo, 6 months old; Sanica Hitozi, 1 year and a half old; Albert Montiljo, 4 months old; Jigal Levi, 1 year old; Rena Papo, 1 year old; Klarica Altarac, 6 years old; David Izreal, 3 years old; Leon Montiljo, 3 years old; Armila Katan, 3 years old; Reneka Glaser, 2 years old; Marko Papo, 2 months and a half old; Izidor Katanj, 1 month old; Hanika Levi, 2 years old; Sarika Maestro, 16 days old; Jozi Hamki, 4 months old; Rozika Papo, 14 years old; Sadi Alatarac, one year old; 2 new-born babies one day old whose names are unknown; Paul Beck, born in 1930; Vladimir Blass, born in 1928; Erih Heber,

born in 1927; Ernest Hober, born in 1927; Marko Kohen, born in 1929; Vladimir Kon, born in 1927; Mihael Pfeffermann, born in 1931; Erich Szonnenschein, born in 1927; Branko Trautmann, born in 1927; Maalta Katank, aged 65; Olga Kohen, aged 40; Estera Esjebazi, nee Artias, aged 60; Estera Penica, aged 85; Sara Papo, aged 80; Daniti Masalto, aged 80; Estera Atias, aged 70; Sinta Levi, aged 61; Donna Altarac, aged 66; Flora Abinun, aged 50; Donna Romano, aged 81; Sofija Graf, aged 78; Sara Altarac, aged 81; Simona Altarac, aged 75; Boena Papo, aged 63; Marija Adler, aged 86; Sidonija Vachtel, aged 66; Estera Pinto, aged 59; Berta Majelovic, aged 67; Herlina Stern, aged 68; Flora Papo, aged 52; Olga Fuchs, aged 59; Pollak Regina, aged 61; Paula Yas, aged 64; Bianko Heim, aged 76; Regina Neumann, aged 69; Luna Babiljo, aged 70; Rakela Maestro, aged 68; Irma Franck, aged 49; Flora Levi, aged 45; Rifka Babiljo, aged 40; Rifka Perera, aged 80; Ovadija Perla, aged 70; Ivana Straus, aged 70; Erna Doch, aged 46; Rosalija Kohn, aged 69; Edita Braun, aged 22; Erna Baruch, aged 56; Roza Deutsch, aged 69; Estera Maestro, aged 69; Julanka Fuchs, aged 56; Estera Maestro, aged 64; Serafina Rosenfeld, aged 64; Stella Danon, aged 65; Emilia Desch, aged 50; Ella Schwartz, aged 62; Simna Erlin, aged 75; Rebeka Ratino, aged 51; Maria Hoeberger, aged 50; Rosalia Weiss, aged 77; Matilda Hecht, aged 84; Estera Altarac, aged 52; Teresa Felkovic, aged 67; Olga Ghuech, aged 57; Katarina Steiner, aged 72;

Mina Krec, aged 72; Luna Maestro, aged 42; Judita Filtel, aged 25; Hermina Jakas, aged 62; Reja Papo, aged 73; Estera Papo, aged 91; Vera Fuchs, aged 53; Frida Greskovic, aged 55; Laura Gluech, aged 80; Regina Breslauer, aged 74; Sara Maestro-Kabiljo, aged 61; Rifka Danon, aged 67; Regina Baravnani, aged 69; Frida Bergman, aged 67; Berta Deutsch, aged 79; Draga Stern-Ronfeld, aged 63; Rifka Baravnanj, aged 91; Lina Fuchs-Weiss, aged 63; Julia Herse-Ferber, aged 68; Gisella Kohn-Krauss, aged 58; Flora Levi, aged 20; Buena Levi, aged 74; Rifka Finzi-Atias, aged 62; Ana Suslab, aged 68; Elsa Gross, aged 61; Berta Sindorf-Baruch, aged 67; Katarina Eisinger, aged 57; Julijana Singer, aged 74; Fanika Krauss, aged 60; Anula Salom-Abumun, aged 47; Esperanza Macaro-Abunin, aged 42; Lenka Papo-Danon, aged 52; Hela Abunin-Katanj, aged 62; Ida Deitch-Goldstein, aged 61; Sara Motilio, aged 74; Estera Altarac-Papo, aged 63; Josefina Fischer-Spiegal, aged 63; Sara Levi, aged 83; Vilma Haumen, aged 55; Cecilia Kohen-Wiedder, aged 72; Lea Pinto-Sumbulovic, aged 67; Jeta Sohr, aged 74; Lenka Levi-Nahnijac, aged 80; Rifka Papo-Perera, aged 42; Vilma Gosnover, aged 47; Julka Kohn-Flesch, aged 70; Estera Finzi, aged 69; Estera Markatic, aged 65; Teresia Stedtler, aged 54; Rifka Kabiljo-Kohn, aged 46; Ana Waldapfel-Weil, aged 67; Estera Papo, aged 86; Rifka Baruch, aged 78; Katica Bregar, aged 61; Paula Kohnhauer, aged 47; Sinha Altarac, aged 44; Rahela Altarac-Sumbul, aged 62; Ana Altarac-Kohn, aged 56; Dara Danon-

Salom, aged 54; Eva Weiss, aged 49; Malvina Rainer, aged 65; Vida Altarac, aged 44; Elizabeta Rein, aged 78; Rosa Friedrich, aged 56; Matilda Albahari, aged 50; Rifka Altarac, aged 38; Irena Kern-Hoch, aged 49; Rosa Weiss-Gottlieb, aged 64; Mazalta Levi, aged 94; Flora Altarac-Maestro, aged 82; Grazia Kamhi-Kohen, aged 54; Katica Guensberg, aged 55; Berta Ohrenstein-Kohn, aged 56; Berta Babiljo, aged 64; Hermina Levi, aged 65; Hermina Bruckner Levinger, aged 75; Estera Macora-Kabiljo, aged 61; Estera Samdel, aged 68; Elvira Schoenheit, aged 43; Estera Kavezoni, aged 67; Roza Baun, aged 67; Rahela Gaon, aged 60; Marija Dorner, aged 65; Blanka Altarac-Kamhi, aged 68; Mazalta Atias, aged 71; Blanka Bararon, aged 52; Jetti Bergman, aged 66; Bianca Albahari, aged 34; Regina Kornfield, aged 64; Rifka Kamhi-Romano, aged 61; Sara Papo-Levi, aged 71; Victoria Trinki-Montiljo, aged 64; Olga Pollak-Fischer, aged 40; Rifka Salom-Izrael, aged 77; Etel Korh-Koch, aged 65; Fani Jelinek-Faerber, aged 75; Rifka Atias-Gaon, aged 90; Sara Altarac-Gaon, aged 50; Simha Kohen, aged 63; Reni Papo-Konforti, aged 43; Majka Salom, aged 70; Rahela Kabiljo-Danon, aged 84; Fani Alkalai, aged 76; Sarlota Rank, aged 71; Ida Montiljo, aged 67; Margina Loew Hartmann, aged 64; Luna Atias-Altarac, aged 63; Lota Bienenfeld-Wachsle, aged 61; Blanka Eskenazi-Montiljo, aged 81; Roza Selemajev, aged 78; Olga Fuchs-Bauer, aged 46; Rahela Altarac, aged 72; Roza Papo, aged 42; Vukica Levi-Altarac, aged 45; Flora Kamhi-Pesah,

aged 67; Vilma Veseli-Robicek, aged 50; Cili Bienenfeld, aged 46; Luna Pinto-Maestro, aged 86; Berta Elasol-Montiljo, aged 89; Erna Eskenazi, aged 42; Berta Mahler, aged 70; Simha Katanj-Danon, aged 68; Emilija Mueller, aged 77; Ida Horvitz, aged 48; Elza Mautner, aged 40; Luna Levi, aged 58; Fani Glazer, aged 72; Rifka Terera-Salom, aged 76; Mina Klein-Flesch, aged 77; Ruzica Weiss, aged 53; Rudolfina Sternberg, aged 50; Estera Pardo-Faon, aged 52; Gizela Weiss-Spiegel, aged 65; Estera Kabiljo, aged 42; Matilda Maestro-Altarac, aged 51; Etelka Kern, aged 46; Erdes Roza, aged 47; Rifka Salom, aged 56; Berta Hochstetter, aged 62; Rifka Papo-Perera, aged 66; Lila Lustig, aged 47; Hanna Danon-Altarac, aged 90; Ema Kraus, aged 35; Terezija Weiss, aged 72; Ana Altarac-Kabiljo, aged 59; Sara Abinun-Salom, aged 53; Klara Maestro, aged 56; Edita Kertes, aged 27; Masalta Atias-Papo, aged 51; Blanka Tradler, aged 72; Karolina Lausch, aged 57; Lea Papo-Nachmias, aged 56; Sinha Abinun, aged 23; Malvina Perl-Korah, aged 66; Sara Rosenberg, aged 60; Malvina Pick, aged 67; Loti Rosenbaum, aged 66; Rea Svarcbrdt, aged 85; Ida Bauer-Erenstajn, aged 85; Berta Levinger-Tinkovac, aged 52; Mazalta Papo, aged 57; Matilda Maestro, aged 50; Regina Dorner-Weltner, aged 67; Flora Kohn, aged 64; Rifka Romano-Montiljo, aged 72; Zumbala Levi-Finzi, aged 32; Klara Sotler-Lazer, aged 74; Margareta Sternberg-Meukes, aged 36; Ana Tolentino-Atias, aged 65; Lea Abinun-Danon, aged 66; Laura Juhn, aged 63; Sara Gaon-Papo, aged 61; Cecilija Rech-

nitzer, aged 87; Luna Romano, aged 68; Blanka Montiljo, aged 32; Klara Montiljo-Alkalaj, aged 36; Esfera Papo, aged 54; Ida Papo-Salom, aged 52; Blanka Atias, aged 76; Ema Friedmann, aged 73; Rena Abinun-Atias, aged 60; Ana Morris-Schwarhartz, aged 69; Fani Stegl-Kleinodstein, aged 56; Berta Pinto, aged 62; Dragica Rosenfeld, aged 27; Hana Herberger, aged 67; Hana Papo, aged 22; Mazalta Pardo, aged 62; Erna Salom, aged 35; Estera Altarac, aged 42; Mirko Spieler, aged 15; Flora Walla-Markatic, aged 63; Rifka Baruch-Elazan, aged 69; Rozalia Weiss, aged 67; Rahela Baruch, aged 70; Buena Kamhi-Maestro, aged 59; Vida Levi-Altarac, aged 81; Erpura Levi-Poen, aged 60; Ema Pollak, aged 66; Simha Demajo-Finzi, aged 64; Sinha Baruch, aged 76; Lenka Spitzer, aged 61; Sara Levi-Samokovlja, aged 76; Paula Adler-Singer, aged 57; Klara Altarac, aged 66; Roza Papo-Pinto, aged 51; Sarlota Hamburger, aged 57; Ranela Montiljo-Finzi, aged 62; Johanna Albahari, aged 38; Sida Albahari-Alkalaj, aged 50; Ernestina Perl, aged 35; Marija Stadler, aged 49; Rena Papo-Perera, aged 60; Estera Alkalaj, aged 72; Blanka Maestro-Solzi, aged 31; Bukica Kohen, aged 29; Mariana Levi-Erera, aged 47; Gizela Firtl, aged 64; Blanka Papo-Maestro, aged 72; Berta Papo, aged 42; Sara Levi-Atias, aged 51; Gizela Schnitzler-Schmalz, aged 45; Redjica Montiljo, aged 84; Sali Liebling-Spitzstein, aged 59; Sara Pinto, aged 76; Friderika Han-Levi, aged 47; Luna Levi, aged 70; Rahela Kamhi-Danon,

aged 64; Sidonija Schwabenitz-Bencic, aged 44; Blanka Altarac-Danon, aged 39; Zora Jelinek, aged 36; Frida Reiss, aged 62; Rifka Altarac, aged 66; Sida Fusiel-Levi, aged 50; Matilda Trinki, aged 38; Frida Gruenfeld-Kaufmann, aged 62; Blanka Salom-Baruch, aged 77; Rena Daniti, aged 53; Estera Altarac, aged 76; Estera Gaon-Papo, aged 61; Rahela Jokl, aged 70; Mazal Pinto, aged 63; Rena Levi-Altarac, aged 62; Julija Sunit-Newmann, aged 76; Sida Katanj-Altarac, aged 61; Klara Papo-Montiljo, aged 84; Sida Altarac, aged 43; Zaneta Snetrefl, aged 66; Serafina Levi, age unknown; Klara Papo, aged 40; Justina Ozno-Altarac, aged 55; Kamhi Vukas-Levi, aged 62; Rena Katanj-Altarac, aged 64; Mirijana Eskenazi-Altarac, aged 62; Blanka Abinun, aged 19; Leontina Deutch, aged 64; Roza Politzer, aged 73; Zumbuka Finzi, aged 63; Rahela Levi-Altarac, aged 66; Eugenija Graf-Taussig, aged 64; Elze Eskenazi, aged 45; Gaon Rahela, aged 63; Klara Finzi, aged 21; Vera Davidovic, aged 22; Flora Romano, aged 71; Ruzica Spitzer, aged 40; Ritica Samokovlja-Altarac, aged 33; Stella Lustig, aged 49; Luna Abinun-Finzi, aged 60; Teresa Buena-Gaon, aged 75; Estera Atias, aged 66; Estera Altarac-Maestro, aged 51; Blanka Salom, aged 47; Lotti Laufer-Klimper, aged 51; Blanka Blun-Abinun, aged 63; Nana Konforti-Levi, aged 65; Josefina Rechnitzer-Weiss, aged 42; Malvina Hechtz, aged 65; Rahela Levi-Pinto, aged 37; Blanka Papo-Altarac, aged 60; Rena Kohn, aged 48; Mazalta Hazan-Habiljo, aged 62; Vida Rosenfeld, aged 65; Hana Salom-Ferera, aged 41; Ana

Greif-Kornes, aged 51; Klara Altarac-Levi, aged 89; Ovu Levi-Lazahj, aged 71; Blanka Bahan-Salom, aged 63; Estera Montiljo-Levi, aged 64; Regina Hausne aged 45; Luna Levi, aged 61; Keni Rosenberger, aged 61; Adela Berger, aged 59; Lunci Kabiljo, aged 42; Anica Spitzstein, aged 49; Simha Reli-Kamhi, aged 82; Klara Katanj-Eskenazi, aged 90; Rahela Levi-Papo, aged 54; Simha Kohen-Maestro, aged 70; Sara Levi-Papo, aged 65; Frizika Frelih, aged 54; Bazalta Pinto-Samokovlja, aged 62; Julija Beherman-Pick, aged 68; Jozefina Kohn-Sors, aged 79; Fanika Laus-Rosinger, aged 66; Janina David-Wadel, aged 61; Mirka Altarac, aged 39; Paula Daniti-Romano, aged 37; Evica Vernes, aged 42; Rifka Macoro, aged 66; Nehan Atias-Montiljo, aged 41; Sofia Blau, aged 61; Berta Romano-Salom, aged 41; Antonija Neuman-Blau, aged 58; Luna Levi, aged 51; Estera Kabiljo-Danon, aged 48; Blanka Adler-Altarac, aged 54; Ilonka Binfeld-Steiner, aged 41; Luna Steiner-Kelerman, aged 64; Hermina Reis, aged 65; Luna-Altarac-Papo, aged 64; Rena Salom, aged 61; Berta Finzi, aged 33; Estera Levi-Baruch, aged 49; Juliska Samlajic, aged 61; Mazelta Kabiljo-Finzi, aged 66; Rena Glazer, aged 67; Blanka Altarac, aged 36; Ida Eisinger, aged 61; Lea Finzi, aged 66; Mirijana Ferera-Altarac, aged 40; Roza Gottesmann, aged 41; Hana Hazanj-Gaon, aged 27; Simha Pinto-Finzi, aged 61; Rozika Levi, aged 37; Klara Reibach, aged 67; Estera Sternberger, aged 58; Klara Finzi, aged 19; Blanka Altarac-Maestro, aged 60; Helena Fuchs-Hertman, aged 33; Rosa

Beutch, aged 73; Frida Nador, aged 23; Grazia Perera, aged 57; Ema Viamant, aged 74; Mazalta Abinun, aged 28; Rena Danon, aged 18; Jelica Sorger, aged 22; Gizela Neumann, aged 64; Klara Maestro, aged 71; Dana Katanj, aged 32; Lea Sarina, aged 27; Gizela Kalderon, aged 27; Grazia Altarac, aged 42; Sara Atias, aged 36; Estera Levi, aged 42; Beti Sveher, aged 61; Vera Finzi, aged 35; Simha Papo, aged 66; Paula Albahari, aged 27; Klara Pfefferd, aged 46; Simha Altarac, aged 65; Erna Kajon, aged 24; Sumbula Salom, aged 47; Rifka Samokovlja, aged 62; Mazalta Levi, aged 65; Rifka Montiljo, aged 39; Erna Kohen, aged 28; Klara Abinun, aged 36; Irena Rudenki, aged 65; Hermina Kenig, aged 64; Grazia Perera, aged 54; Matilda Alkalaj, aged 63; Rahela Montiljo, aged 16; David Atias, aged 19; Rahela Levi, aged 65; Cipura Levi, aged 35; Danka Gaon, age unknown; Katinka Kraus, aged 64; Samka Kamfi, aged 16; Mehama Levi, aged 46; Esperanza Musafia, aged 61; Sarlota Noshes, aged 59; Ana Reich, aged 33; Matilda Kenig, aged 48; Sarika Kamhi, aged 18; Elisa Reich, aged 25; Klara Maestro, aged 62; Mazalta Levi, aged 62; Rahela Kajon, aged 61; Flora Kamhi, aged 54; Berta Golfinger, aged 47; Mira Silink, aged 57; Rahela Gaon-Maestro, aged 62; Sida Baruch, aged 31; Vera Balas, aged 19; Sofia Simbula-Slinka, aged 30; Hermina Kenig, aged 64; Erzi Bross, aged 35; Sinjora Atias, aged 42; Ernestina Goldstein, aged 66; Lenka Tesah, aged 52; Johana Seligmann, aged 35; Rifka Papo, aged 60; Anita Spitzner, aged 38; Klara Kohen,

aged 36; Bianca Pinto, aged 31; Cecilija Hirschl, aged 53; Lotika Baruk, aged 20; Estera Altarac, aged 76; Flora Altarac, aged 66; Mirijana Kamhi, aged 22; Dzentila Maestro, aged 75; Blanka Gaon, aged 54; Vera Schwabelitz-Bencic, aged 19; Sara Katanj, aged 52; Blanka Danon, aged 19; Regina Eskenazi, aged 54; Regina Kavo, aged 36; Simha Salom, aged 67; Flora Levi, aged 35; Margita Zorger, aged 42; Olga Bajnhadzer, aged 51; Rahela Salom, aged 47; Ella Kalaf-Papo, aged 56; Sara Montiljo, aged 56; Blanka Daniti, aged 55; Alice Nauman, aged 42; Cukolina Salom, aged 66; Lujza Pinto, aged 52; Selma Rosenzweig, aged 61; Flora Levi, aged 32; Rebeka Pinto, aged 57; Rena Misin-Papo, aged 57; Helena Mandl, aged 61; Sida Abinun, aged 35; Mirjana Kabiljo, aged 36; Rifka Levi, aged 72; Olga Singer, aged 64; Rahela Kohen, aged 85; Rahela Abinun, aged 54; Rifka Kaljon, aged 59; Erna Levi, aged 25; Klementina Polla, aged 72; Roza Mandenbaum, aged 34; Lotte Weiss, aged 61; Loti Abinun, aged 28; Flora Altarac, aged 36; Rasela Altarac, aged 47; Fanika Sallinger, aged 58; Matilda Albahari, aged 46; Olga Papo, aged 44; Estera Atijas, aged 59; and Elizabeta Samok, aged 31.

47 Serb-Orthodox Priests, to wit: Priest Milan Bozic, religious teacher of Sarajevo; Priest Bogdan Lalic; Priest Jovan Zec, parson of Vozuce village; Bishop Sava Trlajic; Priest Djuro Alagic, parson at Gornja Dubrava; Jovan Bjegovic, religious teacher of Bihac; Nikola Bogunovic, parson of

Donji Lapac; Danila Brakus, parson of Bjelo Polje; Petar Vucinic, member of the Church Court of Plasko; Milan Dklic, parson of Kosinje; Milan Dokmanovic, priest and parson at Plasko; Milojko Dosen, parson of Pocitelje, Gospic District; Vladimir Dujic, parson and Arch-Episcopal Deputy of Srpske Moravice; Milan Djukic, Secretary of the Episcopal Board; Gligorije Zivkovic, parson of Bacuga; Ilija Iljic, retired member of the Church-Court; Dimitrije Jelkovic, parson of Siroka Kula; Teofan Kosanovic, Abbot of the Gomirje Monastery; Djuro Marijan, parson of Senj; Dositej Obradovic, Deacon of Plasko; Ilija Pavlica, parson of Munjava, District Ogulin; Vujadin Panjekovic, parson of Debelo Brdo; Priest Milan Rajcevic, of Plaska; Uros Rajevic, parson of Mogoric; Petar Raceta, parson of Bunis; Radivoje Stanisavljevic, parson of Koronica; Matija Stijacic, parson of Smiljane; Jasa Stepanov, parson of Plasko; Metodije Subotin, Abbot; Stevan Curcic, parson of Ogulin; Nikola Ban, religious teacher of Bjelovar; Dr. Branko Barac, parson of Sisak; Lazar Zivadinovic, Deacon; Adam Marin, parson of Koprivnica; Djordje Milojevic, parson of Novi Pavljani; Priest Dusan Krnjevic; Vojislav Gasic, parson of Tunjevac; Mihajlo Jovanovic, retired priest of Brodac; Mihajlo Hovanovic, parson of Mackovac; Ljubomir Krnjic, parson of Brodac; Bjeljina District; Jovan Magarasevic, Episcopal Deputy and parson at Tuzla; Milorad Pekic; parson at Sibosnica; Savo Popovic, parson at Brezovo Polje,

Bryko District; Platon, Bishop of Banja Luka; Slavko Zjalic, parson of Paklenica; Pentelija Landup, parson of Strijezevica; and Jovan Stojanovic, Priest, Episcopal Deputy and member of the Church Court at Pakrac.

48 rabbis and cantors of the Jewish Religion, to wit: Dr. Deutshem, rabbi at Ludbreg, aged about 70; Dr. Simon Ungar, rabbi of Osijek, aged about 60; Hinko Gruenwald, rabbi at Podravska Slatina, aged about 95; Ilija Grunewald, Chief Rabbi at Cakovac, aged about 55; Miroslav Freidberger, Chief Rabbi at Zagreb, aged about 40; Dr. M. Heisz, Chief Rabbi at Sisak, aged about 60; Dr. Rudolf Gluech, rabbi at Varazdin, aged about 70; Dr. N. Kohn, rabbi at Koprivnica, aged about 58; David Meissl, Cantor at Karlovac, aged about 55; Leo Wolfenzon, Cantor at Koprivnica, aged about 55; Izidor Dolf, Cantor at Bjelovar, aged about 45; Leon Katan, Cantor at Brcko, aged 66; Leopold Katz, rabbi and cantor at Daruvar, aged about 65; Gilmann Josif, rabbi and cantor at Daruvar, aged about 65; N. Schwartz, rabbi and cantor at Donji Miholjac, aged about 45; Salamon Baruch, rabbi and cantor at Dubrovnik, aged 42; Alexander Roth, cantor at Djakovo; N. Roth, rabbi at Murska Sobota, aged about 70; Lavoslav Buchsbaum, Chief Cantor at Krizevci, aged 72; David Perera, rabbi at Mostar, aged about 40; Jakov Schmelzer, Cantor at Nasice, aged about 35; Andrija Trilnik, rabbi at Nova Gradiska, aged about 30; Paul Froehlich, Chief Cantor at Osijek, aged about 28; Isidor

Guren, Cantor at Osijek, aged about 60; Izak Freides, rabbi at Pakrac, aged about 55; Jakov Klinkovstajn, Chief Cantor at Sisak, aged about 65; Modreschsil Rikow, rabbi at Slavonska Pozega, aged about 70; Boris Selfe, Chief Cantor at Slavonski Brod, aged 32; Izak Finzi, rabbi at Split; Otto Deutsch, rabbi at Susak; Izak Baruch, rabbi at Travnik; Jakov Kohn, cantor at Varazdin; N. Kohn, rabbi and cantor at Banja Luka; Mijo Propper, Chief Cantor at Vinkovci, aged about 60; Izidor Hersmovic, Cantor at Vinkovci, aged about 60; Adolf Springer, Chief Cantor at Virovitica, aged about 45; Vijoslav Mandel, Cantor at Vukovar, aged 32; Josip Weissmann, Chief Cantor in pension of Zagreb, aged 73; M. Loewy, Dean and Professor at the School for Rabbis at Zagreb, aged about 70; Eugen Mandel, Cantor at Zagreb, aged about 35; Lavoslav Kahn, Cantor of the Orthodox Jewish Community at Zagreb, aged about 45; Samuel Singer, Cantor of Zagreb, aged about 65; David Atijas, Cantor at Zagreb; Arnold Basch, Cantor of Zagreb, aged about 27; Dragutin Vogel, Cantor of Zagreb, aged 27; Dr. N. Schlank, Chief Rabbi at Beograd, aged about 55; N. Grossmann, Chief Cantor of Beograd, aged about 55; and Ignaz Klein, Rabbi at Pancevo, aged 48.

Twenty-second Count

I.

Complainant incorporates herein each and all of the allegations contained in Paragraph I, II, III,

IV and VI of the First Count hereof, and Paragraph II of the Second Count hereof and by this reference makes said allegations a part hereof as though set out herein.

II.

That prior to the filing of said Accusation and in the period from the middle of April, 1942, to the beginning of October, 1942, said Andrija Artukovic did willfully, deliberately and with premeditation participate in the murder, within the jurisdiction of said County Court of Zagreb, of Anica Bahan, 3 months old; Alalmon Kabiljo, 6 months old; Gita Maestro, 1 year old, Lencika Maestro, child of unknown age; Jakica Koen, 1 year old, Moric Maestro, 10 months old; Ana Kalderon, 1 year and a half old; Rafael Atias, 10 months old; Izi Papo, 1 year old; Josef Klain, 2 years old; Levi Kohen, 2 years old; Josef Macaro, 1 year old; Sida Papo, 1 year old; Samika Azael, 1 year old; Gabrijel Finci, 1 year and a half old; Moric Augenstein, 4 years old; Rena Kabiljo, 2 years old; Regina Finci, 1 year old; Leon Altarac, 6 years old; Rudolph Spirer, 3 years old; Nenz Habinum, 4 years old; Izak Pardo, 1 year old; Robert Altarac, 2 years old; Aro Hent, 3 years old; Lidica Levi, 3 years old; Ruber Guemberger, 10 years old; Rafael Reich, 10 years old; Lea Papo, 4 years old; Moses Bienenfeld, 5 years old; Mihael Bauer, 5 years old; Esperanza Maestro, 1 year old; Marko Salom, 3 years old; Salamon Montijo, 6 months old; Sanica Hitozi, 1 year and a half old; Albert Montiljo, 4 months old; Jigal Levi, 1 year old; Rena Papo, 1 year old; Klarica Altarac,

6 years old; David Izreal, 3 years old; Leon Montiljo, 3 years old; Armila Katan, 3 years old; Reneka Glaser, 2 years old; Marko Papo, 2 months and a half old; Izidor Katanj, 1 month old; Hanika Levi, 2 years old; Sarika Maestro, 16 days old; Jozi Hamki, 4 months old; Rozika Papo, 14 years old; Sadi Alatarac, 1 year old; 2 newborn babies one day old whose names are unknown; Paul Beck, born in 1930; Vladimir Blass, born in 1928; Erih Heber, born in 1927; Ernest Heber, born in 1927; Marko Kohen, born in 1929; Vladimir Kon, born in 1927; Mihael Pfeffermann, born in 1931; Erich Szonnenschein, born in 1927; Branko Trautmann, born in 1927; Maalta Katank, aged 65; Olga Kohen, aged 40; Estera Esjebazi, nee Artias, aged 60; Estera Penica, aged 85; Sara Papo, aged 80; Daniti Masalto, aged 80; Estera Atias, aged 70; Sinta Levi, aged 61; Donna Altarac, aged 66; Flora Abinun, aged 50; Donna Romano, aged 81; Sofija Graf, aged 78; Sara Altarac, aged 81; Simona Altarac, aged 75; Boena Papo, aged 63; Marija Adler, aged 86; Sidonija Vachtel, aged 66; Estera Pinto, aged 59; Berta Majelovic, aged 67; Herlina Stern, aged 68; Flora Papo, aged 52; Olga Fuchs, aged 59; Pollak Regina, aged 61; Paula Yas, aged 64; Bianko Heihm, aged 76; Regina Neumann, aged 69; Luna Kabiljo, aged 70; Rakela Maestro, aged 68; Irma Franck, aged 49; Flora Levi, aged 45; Rifka Kabiljo, aged 40; Rifka Perera, aged 80; Ovadija Peria, aged 70; Ivana Straus, aged 70; Erna Doch, aged 46; Rosalija Kohn, aged 69; Edita Braun, aged 82; Erna Baruch, aged 56; Roza

Deutsch, aged 69; Estera Maestro, aged 69; Julanka Fuchs, aged 56; Estera Maestro, aged 64; Serafina Rosenfeld, aged 64; Stella Danon, aged 65; Emilia Desch, aged 50; Elle Schwartz, aged 62; Simna Erlin, aged 75; Rebeka Ratino, aged 51; Maria Hocberger, aged 50; Rosalia Weiss, aged 77; Matilda Hecht, aged 84; Estera Altarac, aged 52; Teresa Felkovic, aged 67; Olga Gluech, aged 57; Katarina Steiner, aged 72; Mina Krec, aged 72; Luna Maestro, aged 42; Judita Filtl, aged 25; Hermina Jakab, aged 62; Reja Papo, aged 73; Estera Papo, aged 91; Vera Fuchs, aged 53; Frida Greskovic, aged 55; Laura Gluech, aged 80; Regina Breslauer, aged 74; Sara Maestro-Kabiljo, aged 61; Rifka Danon, aged 67; Regina Baravnani, aged 69; Frida Bergman, aged 67; Berta Deutsch, aged 79; Draga Stern-Ronfeld, aged 63; Rifka Baravnanj, aged 91; Lina Fuchs-Weiss, aged 63; Julia Herse-Ferber, aged 68; Gisella Kohn-Krauss, aged 58; Flora Levi, aged 20; Buena Levi, aged 74; Rifka Finzi-Atias, aged 62; Ana Suslah, aged 68; Elsa Gross, aged 61; Berta Sindorf-Baruch, aged 67; Katarina Eisinger, aged 57; Julijana Singer, aged 74; Fanika Krauss; aged 60; Anula Salom-Abunun, aged 47; Esperanza Macaro-Abunin, aged 42; Lenka Papo-Danon, aged 52; Hela Abunin-Katanj, aged 62; Ida Dietch-Goldstein, aged 61; Sara Motilio, aged 74; Estera Altarac-Papo, aged 63; Josefina Fischer-Spiegal, aged 63; Sara Levi, aged 83; Vilma Haumen, aged 55; Cecilia Kohen-Wiedder, aged 72; Lea Pinto-Sumbolovic, aged 67; Jeni

Sohr, aged 74; Lenka Levi-Nahnijac, aged 80; Rifka Papo-Perera, aged 42; Vilma Gosnover, aged 47; Julka Kohn-Flesch, aged 70; Estera Finzi, aged 69; Estera Markatic, aged 65; Teresia Stedtler, aged 54; Rifka Kabiljo-Kohn, aged 46; Ana Waldapfel-Weil, aged 67; Estera Papo, aged 86; Rifka Baruch, aged 78; Katica Bregar, aged 61; Paula Kornhauser, aged 47; Sinha Altarac, aged 44; Rahela Altarac-Sumbul, aged 62; Ana Altarac-Koen, aged 56; Dara Danon-Salom, aged 54; Eva Weiss, aged 49; Malvina Rainer, aged 65; Vida Altarac, aged 44; Elizabeta Rein, aged 78; Rosa Friedrich, aged 56; Matilda Albahart, aged 50; Rifka Altarac, aged 38; Irena Kern-Hoch, aged 49; Rosa Weiss-Gottlieb, aged 64; Mazalta Levi, aged 94; Flora Altarac-Maestro, aged 82; Grazia Kamhi-Kohen, aged 54; Katica Guensberg, aged 55; Berta Ohrenstein-Kohn, aged 56; Berta Kabiljo, aged 64; Hermina Levi, aged 65; Hermina Bruckner Devinger, aged 75; Estera Macora-Kabiljo, aged 61; Estera Samdel, aged 68; Elvira Schoenheit, aged 43; Estera Kavenzoni, aged 67; Roza Baun, aged 67; Rahela Gaon, aged 60; Marija Dorner, aged 65; Blanka Altarac-Kamhi, aged 68; Mazalta Atias, aged 71; Blanka Bararon, aged 62; Jetti Bergman, aged 66; Bianca Albahari, aged 34; Regina Kernfield, aged 64; Rifka Kamhi-Romano, aged 61; Sara Papo-Levi, aged 71; Victoria Trinki-Montiljo, aged 64; Olga Pollak-Fischer, aged 40; Rifka Salom-Izreal, aged 77; Etel Korh-Koch, aged 65; Fani Jelinek-Faerber, aged 75; Rifka Atias-Gaon, aged 90; Sara Altarac-Gaon, aged 50; Simha Kohen,

aged 63; Reni Papo-Konforti, aged 43; Majka Salom, aged 70; Rahela Kabiljo-Danon, aged 84; Fani Alkalaj, aged 76; Sarlota Rank, aged 71; Ida Montiljo, aged 67; Margina Loew Hartmann, aged 64; Luna Atias-Altarac, aged 63; Lota Bienenfeld-Wachsle, aged 61; Blanka Eskenazi-Montiljo, aged 81; Roza Selesmajev, aged 78; Olga Fuchs-Bauer, aged 46; Rahela Altarac, aged 72; Roza Papo, aged 42; Vukica Levi-Altarac, aged 45; Flora Kamhi-Pesah, aged 67; Vilma Veseli-Robicek, aged 50; Cili Bienenfeld, aged 46; Luna Pinto-Maestro, aged 86; Berta Elasol-Montiljo, aged 89; Erna Estenazi, aged 42; Berta Mahler, aged 70; Simha Katanj-Danon, aged 68; Emilija Mueller, aged 77; Ida Horvitz, aged 48; Elza Mautner, aged 40; Luna Levi, aged 58; Fani Glazer, aged 72; Rifka Terera-Salom, aged 76; Mina Klein-Flesch, aged 77; Ruzica Weiss, aged 53; Rudolfina Sternberg, aged 50; Estera Pardo-Faon, aged 52; Gizela Weiss-Spiegel, aged 65; Estera Kabiljo, aged 42; Matilda Maestro-Altarac, aged 51; Etelka Kern, aged 46; Erdes Roza, aged 47; Rifka Salom, aged 56; Berta Hochstetter, aged 62; Rifka Papo-Perera, aged 66; Lila Lustig, aged 47; Hanna Danon-Altarac, aged 90; Ema Kraus, aged 35; Terezija Weiss, aged 72; Ana Altarac-Kabiljo, aged 59; Sara Abinun-Salom, aged 53; Klara Maestro, aged 56; Edita Kertes, aged 27; Masalta Atias-Papo, aged 51; Blanka Tradler, aged 72; Karolina Lausch, aged 57; Lea Papo-Nachmias, aged 56; Sinha Abinun, aged 23; Malvina Perl-Korah, aged 66; Sara Rosenberg, aged 60; Malvina Pick, aged 67; Loti Rosenbaum,

aged 66; Rea Svarcbrdt, aged 85; Ida Bauer-Erenstajn, aged 85; Berta Levinger-Tinkovac, aged 52; Mazalta Papo, aged 57; Matilda Maestro, aged 50; Regina Dorner-Weltner, aged 67; Flora Kohn, aged 64; Rifka Romano-Montiljo, aged 72; Sumbala Levi-Finzi, aged 32; Klara Sotler-Lazer, aged 74; Margareta Sternberg-Meukes, aged 36; Ana Tolentino-Atias, aged 65; Lea Abinun-Danon, aged 66; Laura Juhn, aged 63; Sara Gaon-Papo, aged 61; Cecilija Rechnitzer, aged 87; Luna Romano, aged 68; Blanka Montiljo, aged 32; Klara Montiljo-Alkalaj, aged 36; Estera Papo, aged 54; Ida Papo-Salom, aged 52; Blanka Atias, aged 76; Ema Friedmann, aged 73; Rena Abinun-Atias, aged 60; Ana Morris-Schwarhartz, aged 69; Fani Stegl-Kleinodstein, aged 56; Berta Pinto, aged 62; Dragica Rosenfeld, aged 27; Hana Herberger, aged 67; Hana Papo, aged 22; Mazalta Pardo, aged 62; Erna Salom, aged 35; Estera Altarac, aged 42; Mirko Spieler, aged 15; Flora Walla-Markatic, aged 63; Rifka Baruch-Elazan, aged 69; Rozalia Weiss, aged 67; Rahela Baruch, aged 70; Buena Kamhi-Maestro, aged 59; Vida Levi-Altarac, aged 81; Erpura Levi-Poen, aged 60; Ema Pollak, aged 66; Simha Demajo-Finzi, aged 64; Sinha Baruch, aged 76; Lenka Spitzer, aged 61; Sara Levi-Samokovlja, aged 76; Paula Adler-Singer, aged 57; Klara Altarac, aged 66; Roza Papo-Pinto, aged 51; Sarlota Hamburger, aged 57; Ranela Montiljo-Finzi, aged 62; Johanna Albahari, aged 38; Sida Albahari-Alkalaj, aged 50; Ernestina Perl, aged 35; Marija Stadler, aged 49; Rena Papo-Perera,

aged 60; Estera Alkalaj, aged 72; Blanka Maestro-Solzi, aged 31; Bukica Kohen, aged 29; Mariana Levi-Erera, aged 47; Gizela Firtl, aged 64; Blanka Papo-Maestro, aged 72; Berta Papo, aged 42; Sara Levi-Atias, aged 51; Gizela Schnitzler-Schmalz, aged 45; Redjica Montiljo, aged 84; Sali Liebling-Spitzstein, aged 59; Sara Pinto, aged 76; Friderika Han-Levi, aged 47; Luna Levi, aged 70; Rahela Kamhi-Danon, aged 64; Sidonija Schwabenitz-Bencic, aged 44; Blanka Altarac-Danon, aged 39; Zora Jelinek, aged 36; Frida Reiss, aged 62; Rifka Altarac, aged 66; Sida Fusiel-Levi, aged 50; Matilda Trinki, aged 38; Frida Gruenfeld-Kaufmann, aged 62; Blanka Salom-Baruch, aged 77; Rena Daniti, aged 53; Estera Altarac, aged 76; Estera Gaon-Papo, aged 61; Rahela Jokl, aged 70; Mazal Pinto, aged 63; Rena Levi-Altarac, aged 62; Julija Sunit-Newmann, aged 76; Sida Katanj-Altarac, aged 61; Klara Papo-Montiljo, aged 84; Sida Altarac, aged 43; Zaneta Snetrefl, aged 66; Serafina Levi, age unknown; Klara Papo, aged 46; Justina Ozno-Altarac, aged 55; Kamhi Vukas-Levi, aged 62; Rena Katanj-Altarac, aged 84; Mirijana Eskenazi-Altarac, aged 62; Blanka Abinun, aged 19; Leontina Deutch, aged 64; Roza Politzer, aged 73; Zumbuka Finzi, aged 63; Rahela Levi-Altarac, aged 66; Eugenija Graf-Taussig, aged 64; Else Eskenazi, aged 45; Gaon Rahela, aged 63; Klara Finzi, aged 21; Vera Davidovic, aged 22; Flora Romano, aged 71; Ruzica Spitzer, aged 40; Ritica Samokovlja-Altarac, aged 33; Stella Lustig, aged 49; Luna Abi-

nun-Finzi, aged 60; Teresa Buena-Gaon, aged 75; Estera Atias, aged 66; Estera Altarac-Maestro, aged 51; Blanka Salom, aged 47; Lotti Laufer-Klimper, aged 51; Blanka Blun-Abinun, aged 63; Nina Konforti-Levi, aged 65; Josefina Rechnitzer-Weiss, aged 42; Malvina Hechtz, aged 65; Rahela Levi-Pinto, aged 37; Blanka Papo-Altarac, aged 60; Rena Kohn, aged 48; Mazalta Hazan-Habiljo, aged 62; Vida Rosenfeld, aged 65; Hana Salom, Ferera, aged 41; Ana Greif-Kornes, aged 51; Klara Altarac-Levi, aged 89; Ovu Levi-Lazanj, aged 71; Blanka Bahan-Salom, aged 63; Estera Montiljo-Levi, aged 64; Regina Hauser, aged 45; Luna Levi, aged 61; Keni Rosenberger, aged 61; Adela Berger, aged 59; Lunci Kabiljo, aged 42; Anica Spitzstein, aged 49; Simba Reli-Kamhi, aged 82; Klara Katank-Eskenazi, aged 90; Rahela Levi-Papo, aged 54; Simha Kohen-Maestro, aged 70; Sara Levi-Papo, aged 65; Frizika Frelih, aged 34; Bazalta P ato-Samokovlja, aged 62; Julija Beherman-Piek, aged 68; Jozefina Kohn-Sors, aged 79; Fanika Laus Rosinger, aged 66; Janina David-Wadel, aged 61; Mirka Altarac, aged 39; Paula Daniti-Romano, aged 37; Evica Verues, aged 42; Rifka Macoro, aged 65; Nehàm Atias-Montiljo, aged 41; Sofia Blau, aged 61; Berta Romano-Salom, aged 41; Antonija Neuman-Blau, aged 58; Luna Levi, aged 51; Estera Kabiljo-Danon, aged 48; Blanka Adler-Altarac, aged 54; Ilonka Binfeld-Steiner, aged 41; Luna Steiner-Kelerman, aged 64; Hermina Reis, aged 65; Luna Altarac-Papo, aged 64; Rena Salom, aged 61; Berta Finzi, aged 33; Estera Levi-Baruch,

aged 49; Juliska Samlajic, aged 61; Mazelta Kabiljo-Finzi, aged 66; Rena Glazer, aged 67; Blanka Altarac, aged 36; Ida Eisinger, aged 61; Lea Finzi, aged 66; Mirijana Ferera-Altarac, aged 40; Roza Gottesmann, aged 41; Hana Hozanj-Gaon, aged 27; Simha Pinto-Finzi, aged 61; Rozika Levi, aged 37; Klara Reibach, aged 67; Estera Sternberger, aged 58; Klara Finzi, aged 19; Blanka Altarac-Maestro, aged 60; Helena Fuchs-Hertman, aged 33; Rosa Beutch, aged 73; Frida Nador, aged 23; Grazia Perera, aged 57; Ema Viananti, aged 74; Mazalta Abinun, aged 28; Rena Danon, aged 18; Jelica Sorger, aged 22; Gizela Neumann, aged 64; Klara Maestro, aged 71; Dana Katanj, aged 32; Lea Sarina, aged 27; Gizela Kalderon, aged 27; Grazia Altarac, aged 42; Sara Atias, aged 36; Estera Levi, aged 42; Beti Sveher, aged 61; Vera Finzi, aged 35; Simha Papo, aged 66; Paula Albahari, aged 27; Klara Pfefferd, aged 46; Simha Altarac, aged 65; Erna Kajon, aged 24; Sumbula Salom, aged 47; Rifka Samokovlja, aged 62; Mazalta Levi, aged 65; Rifka Montiljo, aged 39; Erna Kohen, aged 28; Klara Abinun, aged 36; Irena Rudenki, aged 65; Hermina Kenig, aged 64; Grazia Perera, aged 54; Matilda Alkalaj, aged 63; Rahela Montiljo, aged 16; David Atias, aged 19; Rahela Levi, aged 65; Cipura Levi, aged 35; Danka Gaon, age unknown; Katinka Kraus, aged 64; Samka Kamfi, aged 16; Mehama Levi, aged 46; Esperanza Musafia, aged 61; Sarlota Noshes, aged 59; Ana Reich, aged 33; Matilda Kenig, aged 48; Sarika Kamhi, aged 18; Elisa Reich, aged 25; Klara Maestro, aged 62; Ma-

zalta Levi, aged 62; Rahela Kajon, aged 61; Flora Kamhi, aged 54; Berta Golfinger, aged 47, Mira Silink, aged 57; Rahela Gaon-Maestro, aged 62; Sida Baruch, aged 31; Vera Balas, aged 19; Sofia Simbulă-Slinka, aged 30; Hermina Kenig, aged 64; Erzi Bross, aged 35; Sinjora Atias, aged 42; Ernestina Goldstein, aged 66; Lenka Tesah, aged 52; Johana Seligmann, aged 35; Rifka Papo, aged 60; Anita Spitzner, aged 38; Klara Kohen, aged 36; Bianca Pinto, aged 31; Cecilija Hirschl, aged 53; Lotika Baruk, aged 20; Estera Altarac, aged 76; Flora Altarac, aged 66; Mirijana Kamhi, aged 22; Dzentila Maestro, aged 75; Blanka Gaon, aged 54; Vera Schwabelitz-Bencic, aged 19; Sara Katanj, aged 52; Blanka Danon, aged 19; Regina Eskenazi, aged 54; Regina Kavo, aged 36; Simha Salom, aged 67; Flora Levi, aged 35; Margita Zorger, aged 42; Olga Bajnhadzer, aged 51; Rahela Salom, aged 47; Ella Kalaf-Papo, aged 56; Sara Montiljo, aged 56; Blanka Daniti, aged 55; Alice Nauman, aged 42; Cukolina Salom, aged 66; Lujza Pinto, aged 52; Selma Rosenzweig, aged 61; Flora Levi, aged 32; Rebeka Pinto, aged 57; Rena Misin-Papo, aged 57; Helena Mandl, aged 61; Sida Abinun, aged 35; Mirjana Kabiljo, aged 36; Rifka Levi, aged 72; Olga Singer, aged 64; Rahela Kohen, aged 85; Rahela Abinun, aged 54; Rifka Kaljon, aged 59; Erna Levi, aged 25; Klementina Polla, aged 72; Roza Mandenbaum, aged 34; Lotte Weiss, aged 61; Loti Abinun, aged 28; Flora Altarac, aged 36; Rasela Altarac, aged 47; Fanika Sallinger, aged 58; Matilda Albahari, aged 46; Olga Papo, aged 44; Es-

tera Atijas, aged 59; and Elizabeta Samok, aged 31.

47 Serb-Orthodox Priests, to wit: Priest Milan Bozic, religious teacher of Sarajevo; Priest Bogdan Lalic; Priest Jovan Zec, parson of Vozuce village; Bishop Sava Trlajic; Priest Djuro Alagic, parson at Gornja Bubrava; Jovan Bjegovic, religious teacher of Bihac; Nikola Bogunovic, parson of Donji Lapac; Danila Brakus, parson of Bjelo Polje; Petar Vucinic, member of the Church Court of Plasko; Milan Dklic, parson of Kosinje; Milan Dokmanovic, priest and parson at Plasko; Milojko Dosen, parson of Pocitelje, Gospic District; Vladimir Dujic, parson and Arch-Episcopal Deputy of Srpske Moravice; Milan Djukic, Secretary of the Episcopal Board; Gligorike Zivkovic, parson of Bacuga; Ilija Ijic, retired member of the Church-Court; Dimitrije Jelkovic, parson of Siroka Kula; Teofan Kosanovic, Abbot of the Gomirje Monastery; Djuro Marijan, parson of Senj; Dositej Obradovic, Deacon of Plasko; Ilija Pavlica, parson of Munjava, District Ogulin; Vujadin Panjekovic, parson of Debelo Brdo; Priest Milan Rajcevic of Plasko; Uros Rajcevic, parson of Mogoric; Petar Raceta, parson of Bunis; Radivoje Stanisavljevic, parson of Korenica; Matija Stijacic, parson of Smilijane; Jasa Stepanov, parson of Plasko; Metodije Subotin, Abbot; Stevan Curcic, parson of Ogulin; Nikola Ban, religious teacher of Bjelovar; Dr. Branko Barac, parson of Sisak; Lazar Zivadinovic, Deacon; Adam Marin, parson of Koprivnica; Djordje Milojevic, parson of Novi Pavljani;

Priest Dusan Krnjevic; Vojislav Gasic, parson of Tunjevac; Mihajlo Jovanovic, retired priest of Brodac; Mihajlo Jovanovic, parson of Mackovac; Ljubomir Krnjic, parson of Brodac, Bjeljina District; Jovan Margarasevic, Episcopal Deputy and parson at Tuzla; Milorad Pekic, parson at Sibosnica; Savo Popovic, parson at Brezovo Polje, Brcko District; Platon, Bishop of Banja Luka; Slavko Zjalic, parson of Paklenica; Pantelija Landup, parson of Strijezevica; and Jovan Stojanovic, Priest, Episcopal Deputy and member of the Church Court at Pakrac.

48 rabbis and cantors of the Jewish Religion, to wit: Dr. Deutshem, rabbi at Ludberg, aged about 70; Dr. Simon Ungar, rabbi of Osijek, aged about 60; Hinko Gruenwald, rabbi at Podravska Slatina, aged about 95; Ilija Gruenwald, Chief Rabbi at Cakovac, aged about 55; Miroslav Freidsberger, Chief Rabbi at Zagreb, aged about 40; Dr. M. Heisz, Chief Rabbi at Sisak, aged about 60; Dr. Rudolph Gluech, rabbi at Varazdin, aged about 70; Dr. N. Kohn, rabbi at Kaprivnica, aged about 58; David Meissel, Cantor at Karlovac, aged about 55; Leo Wolfenzon, Cantor at Koprivnica, aged about 55; Izidor Dolf, Cantor at Bjelovar, aged about 45; Leon Katan, Cantor at Brcko, aged 66; Leopold Katz, rabbi and cantor at Daruvar, aged about 65; Gilmann Josip, rabbi and cantor at Daruvar, aged about 65; N. Schwartz, rabbi and cantor at Donji Miholjac, aged about 45; Salamon Baruch, rabbi and cantor at Dubrovnik, aged 42; Alexander Roth,

antor at Djakovo; N. Roth, rabbi at Murska So-ota, aged about 70; Lavoslav Buchsbaum, Chief Cantor at Krizevci, aged 72; David Perera, rabbi at Mostar, aged about 40; Jakov Schmelzer, Cantor at Nasice, aged about 35; Andrija Trilnik, rabbi at Nova Gradiska, aged about 30; Paul Froehlich, Chief Cantor at Osijek, aged about 28; Isidor Gùren, Cantor at Osijek, aged about 60; Izak Freides, rabbi at Pakrac, aged about 55; Jakov Klinkovstajn, Chief Cantor at Sisak, aged about 65; Mordeschsil Rikow, rabbi at Slavonska Pozega, aged about 70; Boris Selfe, Chief Cantor at Slavonski Brod, aged 32; Izak Finzi, rabbi at Split; Otto Deutsch, rabbi at Susak; Izak Baruch, rabbi at Travnik; Jakov Kohn, Cantor at Varazdin; N. Kohn, rabbi and cantor at Banja Luka; Mijo Propper, Chief Cantor at Vinkovci, aged about 60; Izidor Hersmovic, Cantor at Vinkovci, aged about 60; Adolph Springer, Chief Cantor at Virovitica, aged about 45; Vijoslav Mandel, Cantor at Vukovar, aged 32; Josip Weissmann, Chief Cantor in pension of Zagreb, aged 73; M. Loewy, Dean and Professor at the School for rabbis at Zagreb, aged about 70; Eugen Mandel, Cantor at Zagreb, aged about 35; Lavoslav Kahn, Cantor of the Orthodox Jewish Community at Zagreb, aged about 45; Samuel Singer, Cantor at Zagreb, aged about 65; David Atijas, Cantor of Zagreb; Arnold Basch, Cantor of Zagreb, aged about 27; Dragutin Vogel, Cantor of Zagreb, aged 27; Dr. N. Schlank, Chief Rabbi at Beograd, aged about 55; N. Grossmann, Chief Can-

tor of Beograd, aged about 55; and Ignaz Klein, rabbi at Pancevo, aged 48.

Wherefore, your complainant, acting under the authority and in the behalf stated, prays the consideration of this Amended Complaint on Extradition and that a warrant may issue for the arrest of said Andrija Artukovic, alias Alois Anich, charged as aforesaid, and that he may be brought before a commissioner or magistrate qualied to act in extradition matters to the end that evidence of criminality may be heard, and if on such hearing such commissioner or magistrate deems the evidence sufficient to sustain the charges of murder and participation in murder under the provisions of the said Treaty, said magistrate or commissioner shall certify the same to the Secretary of State, Washington, D. C. in order that the warrant may issue upon the requisition of the proper authority of said government of the Federal People's Republic of Yugoslavia for the surrender of said Andrija Artukovic, alias Alois Anich, according to the stipulations of said Treaty, and for such other action as the commissioner or magistrate is required under the provisions of said Treaty and the laws of the United States.

Dated: Los Angeles, California, October 15, 1951.

RAFO IVANCEVIC,
Consul General of the Federal People's Republic of Yugoslavia, Complainant.

United States of America
Southern District of California—ss.

Rafo Ivancevic, being by me first duly sworn, deposes and says:

That he is the complainant named in the foregoing Amended Complaint on Extradition; that he has read the foregoing Amended Complaint and knows the contents thereof and that the same is true of his own knowledge.

/s/ RAFO IVANCEVIC.

Subscribed and sworn to before me this 15th day of October, 1951.

HOWARD V. CALVERLEY,
United States Commissioner.

EXHIBIT "A"

Office of the County Public
Prosecutor, Zagreb

No. K 86/1951

Zagreb, September 4, 1951

People's Republic of Croatia, Presidency of the County Court, Zagreb.

Received on September 5, 1951.
No. K. 215/51

INDICTMENT

against Andrija Artukovic for the crime provided for in Art. 135, para 2, (in reference with Art. 19, para 1) of the Criminal Code.

To the County Court, Zagreb

I, the undersigned County Public Prosecutor at Zagreb, on the basis of Article 35, point 5 of the Law on Criminal Procedure

Accuse

Andrija Artukovic, born November 29, 1899, in the village of Klobuk, Ljubuski District, People's Republic of Bosna and Herzegovina, to Marijan and Ruza, nee Rosic; nationality Croat; citizen of the Federal People's Republic of Yugoslavia; resided in Zagreb from April 15, 1941, to May, 1945; now residing in the United States of America,

for having, in the course of 1941 and 1942, when Yugoslavia was occupied by German and Italian troops, issued orders based on criminal motives, hatred and the desire for power, to members of bands of which he was one of the leaders, to carry out mass mass slaughters of the peaceful civilian population of Croatia, Bosnia and Herzegovina, especially women and children, which orders were executed in their entirety, and in this way of having consciously and deliberately ordered and caused the death of thousands of men, women and children—Serbs, Croats, Jewish people, Gypsies and other citizens of Yugoslavia who were often cruelly tortured and deprived of their property. The accused Andrija Artukovic ordered and caused the commission of the following crimes:

1.

In the month of May, 1941, he ordered that the Greek Orthodox Bishop of Dabro-Bosanski, Peter Zimonjic, be taken into custody and sent to the concentration camp in Kerestinec to be killed. This order was fully carried out. The accused therefore ordered and caused the aforesaid Bishop, Zimonjic, to be taken into custody on May 12, 1941, in Sarajevo, taken to the concentration camp in Kerestinec where he was, after cruel mistreatment, killed on a day in the Summer of the same year the exact date of which has not been established.

2.

In the month of June, 1941, he ordered Mijo Babic, a person of his confidence, to kill citizens of Serbian nationality in Herzegovina. The latter carried out this order with a group of his men of whom Kreso Togonal was especially outstanding in this cruelty. The accused therefore ordered and caused the murder of several thousand citizens, especially in the localities of Gacko and Stolac and their vicinity, including the following persons:

(a) By carrying out the above-mentioned order issued by the accused Artukovic, Mijo Babic and his men arrested, on June 27, and 28, 1941, a large number of peaceful citizens from the locality of Stolac and peasants from the surrounding villages Osanjic and Poprati. These people were taken to the Vidovo field, to a locality called Crkvine and killed there. Among the killed were Miho Vreca,

Branko Popovic, Veljko Popovic, Savo Jovicevic, Scepo Jovicevic, Mitar Bogdanovic, Ilija Popovic, Ilija Kurilic, Jefto Kurilic, Savo Bogdanovic, Branko Radan, Pero Biberdzic, Nedjo Radojevic, Dragan Ruzic, Djordje Kasikovic, Miro Micevic, and his wife Bosiljka, Miho Ruzic, Serdjo Ruzic, the 12 year old brother of Pero Drapic, and many other whereas Djurdja Kojo with her daughters Dragica and Milena and her son Miro were taken to the Bivolje Mountain, Capljina District and killed there.

(b) Carrying out the order of the accused Artukovic, Kreso Togonal and a group of men which came with him, killed in June, 1941, more than 20 peaceful citizens from the locality of Gacko, including the following persons: Bogdan Popovic, Novak Savic, Todor Starovic, Veljko Visnjevac, Pero Visnjevac, Grujo Visnjevac, Gligor Kosutic, Rade Kosovic, the Greek Orthodox priest Vidak Visnjevic, Todor Milosevic, Veljko Visnjevac, Novica Visnjevac, Vlado Jeftanovic, Spasoje Bukvic, Savo Jeftanovic, Maleta Kosutic, Risto Miletic, Vidak Roncevic, Soro Govedarica, Milica Visnjevac, Jovo Janjic, Arsen Miletic, and others. The majority of men were killed at the place called Pavlic near the village of Stepen, some people were killed in the local prison of Gacko whereas the property of these persons were plundered.

(c) Carrying out the order of the accused Artukovic, the group headed by Kreso Togonal killed in

the same month, in the ditch called Golubnjaca, about 170 peasants from the village of Korito. Among the killed were also Golub Bjelica, Milija Bjelica, Stanisa Dumnic, Todor Trklja, Novak Jaksic, and Nikola Srovic whereas Radovan Sarovic of the village of Stepen was taken by this group to the village of Korito where he was killed. Blagoje Sarovic of the village of Stepen was killed by Kreso Togonal himself.

(d) Carrying out the order of the accused Artukovic, Kreso Togonal and his group killed all members of four families of the village of Zborna Gomila including the following persons: from Marko Popovic's family, his wife Spasenija and three children in the age of 1-5 years; from Vaso Popovic's family, him, his wife Jela and six children in the age of 1 to 10 years; Mitar Popovic and his wife Mara, Jovan Boljanovic and his daughter Ljubica whom they first violated. In the Medjuljic village they killed three families: of Andrija Zlatanic, Novak Zlatanic and Trifko Zlatanic; from this last family they killed Trifko and his seven children in the age of 1 to 14 years and his daughter-in-law Danica Zlatanic. The male members of the mentioned seven families were killed at the place Avtovac and the women and children at Kuljsko Polje in the so-called Hadzija ditch. This group at the same time plundered and set to fire the villages Stepen, Przin and Pustopolje.

(e) Carrying out the order of the accused Artukovic, Kreso Togonal and his group killed three

families of the village of Pula, Gacko District, on June 22, 1941. At the place, called Mostin, they killed Pilja Boljanovic, his two sons, his daughter Milica, her two months old baby and seven more members of this family. At the so-called Cavcine ditch they killed the family of Spiro Boljanovic: his wife Cvijeta, his mother Roza, 90 years of age, and his sons Marto, 10 year old and Bosko, 3 years old, as well as two daughters. They also killed the whole family Nikolic. In addition to this at the place Aytovac they killed Panta Rundovic, Bora Cukovic, Risto Djuric and other peaceful civilians.

(f) Carrying out the order given by the accused Artukovic, in June 1941, Kreso Togonal and his group killed in the Golubnjaca ditch, Rade Kosovic, Gligo, Kosutic . d Rade Govedarica, peasants from the Miholjaca village and at the place called Vrbica in the Miholjaca village they killed 19 persons, i.e. members of three families in such a way that they were all locked up in house which they have set to fire so that the following persons were incenerated alive: Mitar Govedarica, his wife Petra, their son Anto, 12 years of age, their daughters Boba, 18 and Andja 16 years of age and two more small children, as well as Petar Govedarica's mother; Vule Bijelogrlic, his wife Andja and their seven children: Nada, 20, Petra, 17, Zarko, 14, years of age and four more small children; Jovo Govedarica and his 18 year old daughter.

3.

In June 1941 he ordered Hocevar Ivo, his "Com-

missioner" for the great district of Hum (a part of Herzegovina) that all citizens of Serbian nationality should be killed. This was actually done. Thereby, he ordered and caused the Commission of numerous murders, among which also of the following:

(a) Carrying out the mentioned order given by the accused Artukovic, the members of his band killed about 30 men at a ditch at Sluzanj, Mostar District, on June 22, 1941. Among the victims were also the following: the Orthodox priest Vladimir Gvozdenovic; Branko Cerejkovic and his brother, both of Mostar; two brothers Amovic of Mostar and Jovo Oborina, also of Mostar.

(b) Carrying out the order of the accused Artukovic, the members of his band killed towards the end of June, 1941, at the Tauz aca ditch 5 Orthodox priests of the monastery Zitomislic, Mostar District the Hieromonarch Dositej Vukicevic, Konstantin Vucurovic, and Makarije Pekap and the Deacons Marko Bilanovic and Marko Prodanovic.

(c) Carrying out the order of the accused Artukovic, the members of his band killed in a ditch between Cerno and Medjugorje about 150 men. Among these were also Dusan Komad, salesman of Mostar, Trifko Trklja, employee of the State Monopoly of Mostar, and Ljubo Sain of Mostar.

4.

In June, 1941, he ordered Franjo Vego to kill citizens of Serbian nationality in the area Mostar-

Metkovic, which was actually executed by Franjo Vego. Thus he ordered and caused the following murders:.

(a) Carrying out the mentioned order given by Artukovic, Franjo Vego with his men killed in the course of August, 1941, making several races in the Prebilovci village, Capljina District, a large number of women and children and about 14 men of this village, among whom there were also Bozica Bulut, 37 years of age, Vasilje Bulut, 11 years of age, Milena Bulut, 14 years of age, Mara Bulut, 19 years of age, and a five months old baby, Draginja Bulut, as well as Djurdja Bulut, 65 years of age, and the one year old baby Slavka Bulut. They killed Boja Medic with two small children, Soka Dragicevic, Djuro Keso, Savo Bulut, Danilo Bulut, Vaso Bulut, Bosiljka Dragicevic, the wife of Bogdan Medan, who was with a child, as well as many other persons, the majority of whom they have taken to the place Surance and killed. They tortured women and children on that occasion by beating them and pricking them with bayonets, ill-treating them harshly whereas they raped the girls and plundered the property of these victims.

(b) Carrying out the order of the accused Artukovic, the group headed by Franjo Vego killed in the same month a number of peaceful villagers of Tasovcici, among them were also Todor Moro, Pero Bekan, Lazo Bekan, Rade Bekan, Krsto Moro and others. After they have ill-treated these men, they have thrown a part of them from the Capljina

bridge into the Neretva River whereas they killed the other part at the Bivolje Mountain and plundered their property.

5.

In July, 1941, he ordered Ivan Herencic to kill citizens from the town of Mostar, what Herencic actually did. Thus, he ordered and caused the following murders:

(a) Carrying out the order given by the accused Artukovic, on July 19 and 20, 1941, Ivan Herencic arrested at Mostar more than 100 persons. He ordered these people to be cruelly tortured and then sent to Gospic where they were killed. These people were killed in such a way that 60 men were tied together and brought to the edge of a precipice at the Velebit Mountain. Only the first man was killed and while falling down into the precipice he pulled the rest with him. The following were killed in such a way: Henci Maldibaum, Oskar Maldibaum, Ivo Jerkic, Imsir Gigic, Mesan Sabic, Boro Bilic, Ilija Terzic, Slavko Sipovac, Drago Mandrapa, Veselin Simic, Jasa Santic, Milan Kulidzan, Drasko Pavic, Bato Vulic, and others.

(b) On July 31, and August 1 and 2, 1941, carrying out the order given by the accused Artukovic, Ivan Herencic again arrested many citizens of the town of Mostar and ordered his men to kill them. The victims were the carpenter Sefic, the wife of Vojko Vukovic, the daughter and the son of Monojlo Popovic, Slobodan Vukovic, Salko Leric, Andjelka Dakic, and many others.

6.

Towards the end of August or in the beginning of September, 1941, he ordered the members of his band to kill all inhabitants—men, women and children—in the villages of the Ozren Mountain, near Doboj. They carried out this order immediately. Thus, he ordered and caused the following murders:

(a) Carrying out the order given by the accused Artukovic, the members of his band killed 48 citizens in the village of Srpski Pridjel. Among the killed were also Spasoje Bijelanovic, Cvijetin Bjelanovic, Civijeta Blagojevic, and her 6 month old daughter Zora, Stjepan Todorovic and his wife and Aleksa Manojlovic.

(b) Carrying out the order given by the accused Artukovic, they slaughtered Jefo Iljic and his crippled sons Nenad and Predrag at the Karabegovac village.

(c) At Rijecica village, carrying out the order given by the accused Artukovic, they killed about 25 people, mostly women and children in such a way that they were locked in a stable, they set in fire. Thus, all those who were inside were incenerated, among them Vasilije Radojcic, his wife and three children, up to 14 years of age.

(d) At the Trbuk village, carrying out the order given by the accused Artukovic, they killed Nikola Lukic, 75 years of age, Kosta Lukic and Stanko Malic.

(e) At the Paklencia village, carrying out the order given by the accused Artukovic, they killed Petar Vasiljevic, Milan Soldatovic, Neda Soldatovic, Trivun Soldatovic, and Leposava Sarcevic.

7.

In May, 1942, he ordered the imprisonment and the transportation to concentration camp to be killed there, of all citizens of gypsy origin on the territory of Croatia, Bosnia and Herzegovina, which was immediately carried out. He thus ordered and caused that in May and June, 1942, several thousands of whole families or about 30,000 persons mostly women and children were forcibly brought to the Jasenovac concentration camp and killed there. Among others he ordered and caused the murder of the following persons and families:

(a) in May, 1942, by order given from the accused Artukovic, 102 persons were brought from the locality Tenja, of Osijek District, to the concentration camp at Jasenovac where they were killed. Among them were all members of 20 families, namely 30 women and 40 children up to 14 years of age, were among those killed.

The names of these persons are: Gojko Kikolic, 46 years of age; his wife Soka, 44; daughter Zlatica, 18, son Jovo, 6; daughter Ivanka, 8; and son Dusan, 4 years of age. Peter Nikolic, 78; and his wife Ljuba, 74; Paca Nikolic, 52; her son Emil, 30; daughter Nada, 28; daughter-in-law Zorka, 26; and granddaughter Nada, who was just born. Stevo

Nikolic, 59; Stevo Nikolic, called Pista, 46; his wife Ruza, 39; their son Milan, 9; son Sreto, 7; son Savo, 3; son Toso, 6 months; and daughter Soka, 5 years of age. Milan Nikolic, 48; his wife Milka, 48; daughter Dusanka, 8; son Vaso, 3; and son Rade, one year and a half. Milos Nikolic, 66 years of age, his wife Sovra; son Sovro, 38; daughter-in-law Danica, 36; grandchild Soka, 8; grandchild Krista, 5; grandchild Ilija, 3; and grandchild Stevo, one year of age. Soka Nikolic, 60 years of age; son Mirko, 31; daughter Smilja, 17; daughter Zlatica, 14; daughter Milica, 11; daughter-in-law Julka, 31; granddaughter Ivanka, 5; and grandson Mladen, 3 years of age. Mito Nikolic-Sandor, 39; his wife Marta, 25; daughter Budimka, 5; and son Milos, one year old. Borko Nikolic, 30; his wife Julka, 30; son Sergije, 14; and daughter Jelka, one year of age. Stevo Nikolic, 48; his wife, Mica, 46; son Milenko, 12; son Branko, 10; son Jovo, 6; and son Milan, 2 years of age. Nikolic Savo, 50; his wife, Soka, 50; son Dejan, 30; son Milenko, 29; daughter Jelka, 25; son Branko, 20; son Djuro, 5; son Bosko, 3; daughter Bojanka, several months; and daughter-in-law Mara, 26 years old. Blagoje Nikolic, 44; his wife Stana, 25; son Nikola, 6; and son Djordje, one year old. Stevo Nikolic, 42; Dragan Nikolic, 67; his wife Goluba, 67; son Djordje, 29; daughter Zlatica, 24; daughter-in-law Zorka, 19 years of age; and grandchild Paca, 6 months old. Momcilo Nikolic, 32; his wife Ljubica, 31; son Vidoje, 3; and daughter Milanka, several months old. Smilja Nikolic, 64; son Rade, 31; daughter-in-law Evica,

30; and granddaughter Paca, 6 months old. Milan Nikolic, 59; his wife Ranka, 47; son Ivo, 28; and daughter Ivanka, 3 years old. Sreto Nikolic, 55; son Dusan, 21; Dusan's wife Zlatica, 23; grandson Pero, 6; and grandson Pajo, 4. Momcilo Zlatarev, 36; his wife Jela, 37; son Ivan, 19; son Milovan, 17; daughter Sofija, 14; son Stevo, 13; daughter Danica, 12; daughter Bozica, 4. Zlatarev Mara, 55 years old.

(b) In the same month of May, 1942, by order of the accused Artukovic, 60 persons of Dalj, Osijek District, were taken to the Jasenovac concentration camp and killed. Among them were 17 women and 25 children up to 14 years of age. Their names are:

Misko Nikolic, 60; his wife Sultana, about 60; her son Stevo Jovanic, 35; his wife, Bela Jovanic, 30; and their 8 children between 2 and 20 years of age; Raco Nikolic, 21; the son of Misko Nikolic; his wife Seca, 19 years old and their two small children; Milan Nikolic, 16, second son of Misko Nikolic; his wife and their small child. Pero Nikolic, 58; his wife Mila, 55; son Djuro, 35; daughter-in-law Kosana, 30; granddaughter Ljuba, 14; and grandson Pero, 8. Bozo Nikolic, 21; his wife Ruza, 19; and their small child. Milos Nikolic, 38; his wife Sultana, 35; son Savo, 18; his wife and children of Milos Nikolic: Milojka, 13; Zora, 11; Soka, 9; and Stevan, 5 to 6 years old. Sandor Nikolic, 42; his wife, Stojka, 40; son Nebojsa, 13;

14; daughter Ljuba, 12; and two more small children. Dimitrije Djurdjevic, 45; his wife, Ruza, 40; son Nebojsa, 18; and daughter-in-law Ribica, about 18; Vitomir Nikolic, 28; his wife Mica, 25; daughter Jeca, about 6; and one more small child; then Vitomir Nikolic's mother Mila, 55; Dusan Nikolic, called Guska, 55; Milan Nikolic, 35-40 years of age. Milos Miskovic, about 40; his wife Marija, 35; and two children about 10 years old. Joco Miskovic, about 40. Janos Miskovic, about 60; and his wife Marija, 58 years of age.

(c) At the same time, in May, 1942, under the order by the accused Artukovic, 247 persons, including 95 women and 58 children up to 14 years of age, were taken from the place Vrbanja, Zupanja District to the Jasenovac concentration camp and killed. Their names are:

Nikola Jovanovic, 46; his wife Ana, 40; son Jovo, 7; son Ljubo 5; son Mile, 3; and son Savo, one year old. Maksim Petrovic, 49; his wife Eva, 43 years of age. Zarko Petrovic, 30; his wife Julka, 30 years of age. Jovo Radosavljevic, 52; his wife Maca, 50; son Marko, 30; daughter Mara, 22; daughter Ljuba, 18 years of age. Zarko Radosavljevic, 30; his wife Mara, 28; and son Mita, 3 years of age. Neca Radosavlejevic, 25; his wife Mara, 23; and mother Julka, 58 years of age. Bane Petrovic, 60; his wife, Seca, 59; daughter Mara, 35; daughter Ana, 18; and son Mile, 13 years of age. Ljuboje Petrovic, 60; his wife Ana, 57; son Jozo, 25; Petrovic Marko, 30; his wife, Zorka, 28;

Hadjan Petrovic, 60; and his wife Julka, 57 years old. Mija Petrovic, 60; his wife Duka, 59; son Nikola, 40; sister-in-law Riba, 35; and grandchildren Mile, 15; Ruza, 12; and Mileva, 10 years of age. Mito Paskuljevic, 35; his wife Bosa, 32; son Bozo, 17; son Milan, 15; daughter Mileva, 13; daughter Dara, 12; and son Branko, 10 years old. Ilca Stojanovic, 80; his son Savo Stojanovic, 25; Ilka Stojanovic, 45; and his wife, Kata, 43, years of age. Sava Stojanovic, 44; his wife, Mila, 43; son Marinko, 15; son Djoko, 12; son Branko, 10; daughter Dara, 3; and daughter Milenka, 2 years old. Zivko Petrovic, 44; his wife, Kata, 42; and daughter Zorka, 14 years old. Lazo Petrovic, 60; his wife, Anka, 57; son Branko, 25; and grandchildren Djoko, 6; and Kata, 2 years old. Sandor Petrovic, 45; his wife, 45 years of age and mother Kata, 80 years old. Miso Radosavljevic, 43; his wife, Eva, 43; son Djoko, 13; and daughter Anka, 12 years old. Marko Radosavljevic, 70; his wife Marta, 65; Nikola Radosavljevic, 42; his wife Anka, 42; son Djoko, 16; son Marko, 12; daughter Marta, 10; daughter Ljuba, 9; and daughter Eva, 6 years old. Mijo Radosavljevic, 29; his wife Mileva, 29; daughter Dara, 5; and son Mileta, 3 years old. Sreto Radosavljevic, 20; his wife Ljubica, daughter Seca, 5; and son Djuro, 4 years old. Dragutin Radosavljevic, 35; his wife, Milka, 34; son Pero, 12; daughter Zorka, 3; and his mother Maca, 60 years old. Marko Radosavljevic, 25; his wife Ana, 22; son Srboslav, 5; and daughter Ana, 3 years old. Lazo Radosavljevic, 60; and his wife Mila, 59 years

old. Pero Radosavljevic, 60; and his wife Seca, 58 years old. Stevo Petrovic, 25; his wife Paulina, 23; Ruza Petrovic, 44 and her son Zarko, 16 years old. Ljuboje Petrovic, 25; his wife Mileva, 24; and mother Ljuba, 60 years old. Mila Petrovic, 60; her daughter Bosa, 44; and grandson Bozo, 20 years old. Ilija Radosavljevic, 37; his wife, Danica, 35; daughter Ljubica, 16, son Milan, 13; daughter Mara, 6 years of age. Branko Radosavljevic, 25; his wife Zorka, 25; daughter Mara, 12; daughter Jela, 10; daughter Mila, 6; and daughter Ruza, 3 days old. Ilija Petrovic, 80; his wife Mila, 80; son Dragan 26; and daughter-in-law Julka, 23 years old. Dusan Petrovic, 25; his wife Julka, 25; son Djuro, 12; son Branko, 10; and mother Mila, 60 years old. Danisa Petrovic, 28; his wife Julka, 25; brother Branko, 15; and sister Anka 12 years old. Mito Radosavljevic, 50; his wife, Anka, 50; son Ilija, 20; daughter Julka, 20; daughter Mileva, 6; and son Bozo, 4 years old. Stevo Petrovic, 70; his wife Mara, 69; Laja Petrovic, 45; his wife Darinka, 43; son Branko, 12; son Marko, 10; and daughter Anka, 8 years of age. Radoje Petrovic, 60; his wife Roza, 60; son Mito, 25; and Mara, 20 years of age. Tanasije Petrovic, 30; his wife, Seca, 29; son Zlatko, 13; daughter Marinka, 10; and daughter Ruza, 8 years of age. Slavko Petrovic, 60; his wife Femka, 50; and sister Milka, 44 years of age. Mirko Radosavljevic, 60; his wife Ljuba, 58; son Marinko, 12; and daughter Mileva, 7 years old. Mileva Radosavljevic, 60; son Branko, 17; and son Djuro, 13 years of age. Risto Radosavljevic,

44; his wife Danica, 43; and son Slavko, 19 years of age. Kosta Radosavljevic, 28; his wife Katica, 25; daughter Milinka, 12; and daughter Dara, 6 years of age. Pavo Radosavljevic, 60; his wife Anka, 60 years of age. Dusan Radosavljevic, 60; his wife Anica, 60; son Zlatko, 25; daughter Mileva, 20; son Ljubo, 10; and son Branko, 8 years old. Aga Petrovic, 45; her son Branko Petrovic, 19, son Ivo, 20; and daughter-in-law Dara Petrovic, 19; and Ljuba Petrovic, 20 years of age. Mile Radosavljevic, 44; his wife Danica, 40; son Branko, 16; daughter Paulina, 16; and son Zlatko, 3 years old. Pavo Radosavljevic, 44; his wife, Ljuba, 44; Ziivan Mitrovic, 70; his wife Soka, 60 years old. Dusan Radosavljevic, 45; his wife Slavka, 17; Nikola Radosavljevic, 45, his wife Mila, 40; son Pavo, 19; son Mile, 17; son Rade, 14; son Djuro, 13; daughter Ruza, 12; daughter Mileva, 8; and daughter Zorka, 6 years old. Mijo Radosavljevic, 60; his wife Draga, 55; son Marko, 19; son Rade, 17; and son Jovo, 13 years of age. Milan Paskuljevic, 44; his wife Ljubica, 40; son Slavko, 19; and daughter Danica, 17 years of age. Pero Paskuljevic, 50; his wife Roza, 46 years old. Jole Stojanovic, 43, his wife Julka, 40; and son Zarko, 12 years of age. Ivan Stojanovic, 55; his wife Eva, 50; son Dane, 24; and daughter Jela, 18 years of age. Dmitar Stojanovic, 48; his wife Eva, 45; daughter Mica, 25, daughter Anaa, 20, daughter Kaja, 20; and son Toso, 17 years old. Ivan Stojanovic, 49; his wife Zorka, 45; son Branko, 23; daughter Desanka, 22; daughter Slavica, 18 years

old. Adam Nikolic, 48; his wife Roza, 45; son Stevo, 20; daughter Slavica, 18; and mother Anka Nikolic, 67 years old. Leposava Stojanovic, 70; her son Ilja, 30; son Stevo, 20; her brother Mladjo Stojanovic, 60; his wife, Savka, 55; and the granddaughter of Leposava Stojanovic, Eva, 5 years old.

In the same period, in May, 1942, by order of the accused Artukovic, about 120 persons from the place Zupanja and 460 men, women and children from the village of Bosnjaci were taken to the Jasenovac camp, where they were killed.

(d) Mostly in May, 1942, and partly for a shorter period after that Yugoslav citizens of gypsy origin from other parts were also taken to the Jasenovac concentration camp by order of the accused Artukovic and killed there. They were people also from the following regions:

From the Vinkovic District, from Novi Jankovci District, about 800 men, women and children; from the Stari Mikanovci village 12 complete families. From the Cerne village more than 30 families.

From the Ilok District, from the town Ilok about 60 men, women and children; from the Susjek village about 40, and from the whole district about 500.

From the Vukovar District: From the town of Vukovar about 35 men, women and children; from the Miklusevci village about 150; from the Bogota village about 110; from the Trpinja village about 150, and from Nogoslavci village 25.

From the Djakovo District: From the village of Strizivojna about 60 men, women and childen.

From the Valpovo District: From the place of Valpovo about 500 men, women and children; from the Petrijevci village, 42; from the Satnica village, 90; from the Bistrinci village, 133, and from the Bizovca village 35.

From the Donji Miholjac District: From the town Donji Miholjac, about 120 men, women and children; from the village of Donje Viljevo, about 150; from the Podravski Podgajici village, 31; from the Sveti Djurac village, 30; from the Podravska Moslavina village, 42; and from the Radikovci village, 46, etc.

8.

In the period from the middle of April, 1942, to the beginning of October, 1942, he ordered and caused the transportation to concentration camp and be killed there many completely innocent citizens of Yugoslavia—Croats, Serbs, Jews and other —including particularly women, small children, old aged people, and priests of various religions. All this was carried out and in that period more than 200,000 people were killed in the concentration camps and their property was taken away and plundered. Thus, he ordered and caused the murder in the concentration camps, among other persons, of the following:

Children in the Djakovo camp: Anica Bahan of Sarajevo, 3 months old; Salamon Kabiljo of Sara-

jevo, 6 months old; Gita Maestro, one year old; Lencika Maestro, child of unknown age; Jakica Koen of Sarajevo, one year old; Moric Maestro of Sarajevo, 10 months old; Ana Kalderon of Sarajevo, one year and a half old; Rafael Atias of Sarajevo, 10 months old; Izi Papo of Sarajevo, one year old; Josef Klain of Sarajevo, 2 years old; Levi Kohen of Sarajevo, 2 years old; Jozef Macaro of Sarajevo, one year old; Sida Papo of Sarajevo, one year old; Samika Azael of Saravejo, one year old; Gabrijel Finci of Sarajevo, one year and a half old; Moric Augenstein of Sarajevo, 4 years old; Rena Kabiljo of Sarajevo, 2 years old; Regina Finci of Sarajevo, one year old; Leon Altarac of Sarajevo, 6 years old; Rudolf Spirer of Pozega, 3 years old; Nena Habinun of Sarajevo, 4 years old; Izak Pardo of Zagreb, one year old; Robert Altarac, 2 years old; Aro Hent of Tuzla, 3 years old; Lidica Levi of Sarajevo, 3 years old; Ruber Guemberger of Pakrac, 10 years old; Rafael Reich of Sarajevo, 10 years old; Leo Papo of Sarajevo, 4 years old; Moses Bienenfeld of Zagreb, 5 years old; Mihael Bauer of Zagreb, 5 years old; Esperanza Maestro of Sarajevo, one year old; Marko Salom of Banjaluka, 3 years old; Salamon Montiljo of Sarajevo, 6 months old; Sanica Hitozi of Sarajevo, one year and a half old; Albert Montiljo of Djakovo, 4 months old; Jigal Levi of Sarajevo, one year old; Rena Papo of Sarajevo, one year old; Klarica Altarac of Vlasenica, 6 years old; David Izrael of Sarajevo, 3 years old; Leon Montiljo of Travnik, 3 years old; Armila Katan of Sarajevo, 3 years old;

Reneka Glaser of Djakovo, 2 years old; Marko Papo of Djakovo, 2 months and a half old; Izidor Katanj of Djakovo, one month old; Hanika Levi of Sarajevo, two years old; Sarika Maestro of Djakovo, 16 days old; Jozi Hamki of Sarajevo, 4 months old; Rozika Papo of Sarajevo, 14 years old; Sadi Alatarac of Zenica, one year old; two new-born babies one day old whose identity could not be established.

Further, in other camps among others the following: Paul Beck, born 1930, of Belovar; Vladimir Blass, born in 1928, of Varazdin; Erin Heber, of Daruvar, born in 1927; Ernest Heber of Daruvar, born in 1927; Marko Kohen of Koprivnica, born in 1929; Vladimir Kon of Bjelovar, born in 1927; Mihael Pfeffermann of Zagreb, born in 1931; Erich Szonnenschein of Daruvar, born in 1927; Branko Trautmann of Zagreb, born in 1927.

Further, about 2,000 children whose identity could not be established and who were killed in August, 1942, with poisoned gas (cyclon), in the concentration camp at Stara Gradiska and more than 15,600 children whose identity could not be established and who were detained in the concentration camps at Lobor, Jablanac, near Jasenovac, Mlaka, near Jasenovac, brickkiln Brocica, near Jasenovac, Ostrica, Stara Gradiska, Sisak, Jastrebarsko and Gornja Rijeka. These children were killed by starvation, mixing of caustic soda in their food and by various infectious diseases.

Women in the Djakovo camp: Masalta Katanj, of Sarajevo, 65; Olga Kohen, of Sarajevo, 40; Estera Eskenazi, nee Artias, of Sarajevo, aged 60; Estera Penica, nee Kabiljo, of Sarajevo, aged 85; Sara Papo, nee Kabiljo, of Sarajevo, 80; Daniti Masalto, nee Altarac, of Sarajevo, 80; Estera Atias, nee Katanj, of Sarajevo, 70; Sinta Levi, of Sarajevo, 61; Donna Altarac of Sarajevo, aged 66; Flora Abinun, of Sarajevo, 50; Donna Romano, of Sarajevo, aged 81; Sofija Graf, of Sarajevo, aged 78; Sara Altarac, of Sarajevo, aged 81; Simona Altarac, nee Buhera, of Sarajevo, aged 75; Boena Papo, of Sarajevo, aged 63; Marija Adler, nee Velic, of Vinkovci, 86; Sidonija Vachtel, born at Kaposvar, aged 66; Estera Pinto, nee Papo, of Visegrad, 59; Berta Majelovic, nee Bilko, aged 67; Herlina Stern, aged 68; Flora Papo, of Vlasenice, aged 52; Olga Fuchs, nee Spicer, of Nova Gradiska, aged 59; Pollak Regina, born at Ostopon, aged 61; Paula Yas, nee Veil, born at Vienna, aged 64; Bianka Heim, of Sarajevo, aged 76; Regina Neumann, of Zagreb, aged 69; Luna Kabiljo, of Mostar, aged 70; Rakela Maestro, nee Salom, aged 68; Irma Franck, nee Spiegel, born at Sopron, aged 49; Flora Levi, of Sarajevo, aged 45; Rifka Kabiljo, of Sarajevo, aged 40; Rifka Perera, of Sarajevo, aged 80; Ovadija Perla, of Bitolji, aged 70; Ivana Straus, nee Meil, of Varazdin, aged 70; Erna Doch, nee at Sofia, aged 46; Rosalija Kohn, nee Stern, of Cabuna, aged 69; Edita Braun, of Apatin, aged 22; Erna Baruch, of Sarajevo, aged 56; Roza Deutsch, of Papa, aged 69; Estera Maestro, nee Romano,

of Sarajevo, aged 69; Julanka Fuchs, born at Siklos, aged 56; Estera Maestro, nee Gaun, of Gorazde, aged 64; Serafina Rosenfeld, born at Rabocas, aged 64; Stella Danon, nee Salom, of Sarajevo, aged 65; Emilia Desch, born at Sofia, aged 50; Ella Schwartz, nee Pollak, born at N. Ujvar, aged 62; Simna Erlin, of Travnik, aged 75; Rebeka Ratino, of Bitolj, aged 51; Maria Hocberger, born at Vienna, aged 50; Rosalia Weiss, of Papsa, aged 77; Matilda Hecht, of Atina Bebrina, aged 84; Estera Altarac, of Sarajevo, aged 52; Teresa Felkovic, born at Vienna, aged 67; Olga Gluech, of Vidovac, aged 57; Katarina Steiner, of Lubos, aged 72; Mina Krec, aged 72; Luna Maestro, of Sarajevo, aged 42; Judita Filtl, of Travnik, aged 25; Hermina Jakab, of Kotoriva, aged 62; Reja Papo, of Travnik, aged 73; Estera Papo, of Sarajevo, aged 91; Vera Fuchs, of Zagreb, aged 53; Frida Greskovic, of Podravska Slatina, aged 55; Laura Gluech-Pollak, of Daruvar, aged 80; Regina Breslauer, of Badrnjevina, aged 74; Sara Maestro-Kabiljo, of Zepce, aged 61; Rifka Danon, of Sarajevo, aged 67; Regina Baravnanj, nee Levi, of Sarajevo, aged 69; Frida Bergman, of Osijek, aged 67; Berta Deutsch, of Zagreb, aged 79; Draga Stern-Ronfeld, of Zagreb, aged 63; Rifka Baravnanj, of Sarajevo, aged 91; Lina Fuchs-Weiss, aged 63; Julia Herse-Ferber, of Ludbreg, aged 68; Gisella Kohn-Krauss, of Skoplje, aged 58; Flora Levi, of Zenica, aged 20; Buena Levi, born Levi, of Sarajevo, aged 74; Rifka Finzi-Atias, of Sarajevo, aged 62; Ana Suslah, born at Lenberg, 68; Elsa Gross, of Zagreb, aged 61; Berta

Sindorf-Baruch, of Bijeljina, aged 67; Katarina Eisinger, of Maglaj, aged 57; Julijana Singer, of Nasice, aged 74; Fanika Krauss, of Pozega, aged 60; Anula Salom-Abunun, of Sarajevo, aged 47; Esperanza Macaro-Abunin, aged 42; Lenka Papo-Danon, of Sarajevo, aged 52; Hela Abunin-Katanj, of Sarajevo, aged 62; Ida Deutch-Goldstein, born at Vienna, aged 61; Sara Motilio, of Travnik, aged 74; Estera Altarac-Papo, of Sarajevo, aged 63; Josefina Fischer-Spiegel, of Papo, aged 63; Sara Levi, of Sarajevo, aged 83; Vilma Heumen, of Petrinja, aged 55; Cecilia Kohen-Wiedder, born at Moravska Hranica, aged 72; Lea Pinto-Sumbulovic, of Sarajevo, aged 67; Jeni Sohr, of Osijek, aged 74; Lenka Levi-Nahnijac, of Travnik, aged 80; Rifka Papo-Perera, of Sarajevo, aged 42; Vilma Gosnover, born at Vienna, aged 47; Julka Kohn-Flesch, of Trnjava, aged 70; Estera Finzi, of Bijelina, aged 69; Estera Merkatic, of Bosanski Brod, aged 65; Teresia Stedtler, of Brodjanice, aged 54; Rifka Kabiljo-Kohn, of Beograd, aged 46; Ana Waldapfel-Weil, of Budjina, aged 67; Estera Papo, nee Kabiljo, of Sarajevo, aged 86; Rifka Baruch, of Sarajevo, aged 78; Katica Bregar, nee Mautner, of Pisko Revice, aged 61; Paula Kornhauser, of Mahalovci, aged 47; Sinha Altarac, of Sarajevo, aged 44; Rahela Altrac-Sumbul, of Sarajevo, aged 62; Ana Altarac-Koen, of Sarajevo, aged 56; Dara Danon-Salom, of Sarajevo, aged 54; Eva Weiss, of Velika Kopanica, aged 49; Malvina Rainer, of Vukovar, aged 65; Vida Altarac, of Sarajevo, aged

44; Elisabeta Rein, of Conoplja, aged 78; Rosa Friedrich, of Salvoski Samac, aged 56; Mailda Albahari, of Sarajevo, aged 50; Rifka Altarac, of Sarajevo, aged 38; Irena Kern-Hoch, of Gornja Bazija, aged 49; Rosa Weiss-Gottlieb, of Salv. Brod, aged 64; Mazalta Levi, of Sarajevo, aged 94; Flora Altarac-Maestro, of Sarajevo, aged 82; Grazia Kamhi-Kohen, of Sarajevo, aged 54; Katica Guensberg, born at Dunaszerdahelj, aged 55; Berta Ohrenstein-Kohn, of Pedborc, aged 56; Berta Kabiljo, of Sarajevo, aged 64; Hermina Levi, of Koprivnica, aged 65; Hermina Bruckner Levinger, of Vaska, aged 65; Estera Macora-Kabiljo, of Sarajevo, aged 61; Estera Samdel, of Sarajevo, aged 68; Elvira Schoenheit, aged 43; Estera Kavezoni, of Sarajevo, aged 67; Roza Baun, of Slavonski Brod, aged 67; Rahela Gaon, of Mostar, aged 60; Marija Dorner, of Koprivnica, aged 65; Blanka Altarac-Kamhi, of Sarajevo, aged 68; Mazalta Atias, of Sarajevo, aged 71; Blanka Bararon, of Sarajevo, aged 52; Jetti Bergman, of Zablakovo, aged 66; Bianca Albahari, of Sarajevo, aged 34; Regina Kernfeld, of Strasinci, aged 64; Rifka Kahmi-Romano, of Sarajevo, aged 61; Sara Papo-Levi, of Sarajevo, aged 71; Victoria Trinki-Montiljo, of Mostar, aged 64; Olga Pollak-Fischer, aged 40; Rifka Salom-Izrael, of Bihac, aged 77; Etel Korh-Koch, born at Kovanseles, aged 65; Fani Jelinek-Faerber, of Kremzir, aged 75; Rifka Atias-Gaon, of Travnik, aged 90; Sara Altarac-Gaon, of Sarajevo, aged 50; Simha Kohen, of Sarajevo, aged 63; Reni Papo-Konforti, of Sarajevo, aged 43;

Majka Salom, of Travnik, aged 70; Rahela Kabiljo-Danon, of Sarajevo, aged 84; Fani Alkalaj, of Sarajevo, aged 76; Sarlota Rank, nee Kohn, born at Szigetvar, aged 71; Ida Montiljo, nee Izrael, of Bosanski Petrovac, aged 67; Margina Loew Hartmann, born at Kestehal, aged 64; Luna Atias-Altarac, of Sarajevo, aged 63; Lota Bienenfeld-Wachsle, of Pakrac, aged 61; Blanka Eskenazi-Montiljo, of Sarajevo, aged 81; Roza Selemajev, of Travnik, aged 78; Olga Fuchs-Bauer, of Nova Gradiska, aged 46; Rahela Altarac, of Sarajevo, aged 72; Roza Papo, of Sarajevo, aged 42; Vukica Levi-Altarac, of Sarajevo, aged 45; Flora Kamhi-Pesah, of Bosanski Brod, aged 67; Vilma Veseli-Robicek, born at Sibrani, aged 50; Cili Bienenfeld, of Brodi, aged 46; Luna Pinto-Maestro, of Sarajevo, aged 86; Berta Elasol-Montiljo, of Bijeljina, aged 89; Erna Eskenazi, of Sarajevo, aged 42; Berta Mahler, of Turba, aged 70; Simha Katanj-Danon, of Sarajevo, aged 68; Emilija Mueller, born at Brestorn, aged 77; Ida Horvitz, born at Galron, aged 48; Elza Mautner, aged 40; Luna Levi, of Sarajevo, aged 58; Fani Glazer, of Slavonski Brod, aged 72; Rifka Terera-Salom, of Sarajevo, aged 76; Mina Klein-Flesch, of Trnjava, aged 77; Ruzica Weiss, of Susnjevci, aged 53; Rudolfina Sternberg, of Sarajevo, aged 50; Estera Pardo-Faon; of Tresnja, aged 52; Gizela Weiss-Spiegel, of Cernik, aged 65; Estera Kabiljo, of Sarajevo, aged 42; Matilda Maestro-Altarac, of Sarajevo, aged 51; Etelka Kern, of Budapest, aged 46; Erdes Roza, of Mostar, aged 47; Rifka Salom, of Sarajevo, aged 56; Berta

Hochstetter, born at Vienna, aged 62; Rifka Papo-Perera, born at Sarajevo, aged 66; Lila Lustig, of Sombor, aged 47; Hanna Danon-Altarac, of Sarajevo, aged 90; Ema Kraus, of Osijek, aged 35; Terezija Weiss, of Moticina, aged 72; Ana Altarac-Kabiljo, of Sarajevo, aged 59; Sara Abinun-Salom, of Travnik, aged 53; Klara Maestro, born at Vienna, aged 56; Edita Kertes, of Sombor, aged 27; Masalta Atias-Papo, of Sarajevo, aged 51; Blanka Trader, of Sarajevo, aged 72; Karolina Lausch, born at Vidrac, aged 57; Lea Papo-Nachmias, of Sarajevo, aged 56; Sinha Abinun, of Sarajevo, aged 23; Malvina Perl-Korah, of Tuzla, aged 66; Sara Rosenberg, aged 60; Malvina Pick, of Rovisce, aged 67; Loti Rosenbaum, aged 66; Rea Svarcbrdt, of Travnik, aged 85; Ida Bauer-Erenstajn, of Kopavic, aged 85; Berta Levinger-Tinkovac, aged 52; Mazalta Papo, of Sarajevo, aged 57; Matilda Maestro, of Sarajevo, aged 50; Regina Dorner-Weltner, aged 67; Flora Kohn, of Cakovec, aged 64; Rifka Romano-Montiljo, of Travnik, aged 72; Zumbala Levi-Finzi, of Sarajevo, aged 32; Klara Sotler-Lazer, of Sarajevo, aged 74; Margareta Sternberg-Meukes, born at Pec, aged 36; Ana Tolentino-Atias, of Sarajevo, aged 57; Ela Weinberger-Kramer, of Karlovac, aged 60; Dora Markus, of Slavonski Brod, aged 65; Lea Abinun-Danon, of Sarajevo, aged 66; Laura Juhn, of Zdenac, aged 63; Sara Gaon-Papo, of Sarajevo, aged 61; Cecilija Rechnitzer, of Varazdin, aged 87; Luna Romano, of Sarajevo, aged 68; Blanka Mon-

tiljo, of Visegrad, aged 32; Klara Montiljo-Alkalaj, of Bijeljina, aged 36; Estera Papo, of Sarajevo, aged 54; Ida Papo-Salom, of Bugojno, aged 52; Blanka Atias, of Travnik, aged 76; Ema Friedmann, born at Essingen, aged 73; Rena Abinun-Atias, of Travnik, aged 60; Ana Morris-Schwarhartz, born at Palestine, aged 69; Fani Stegl-Kleinodstein, of Sarajevo, aged 56; Berta Pinto, of Bijeljina, aged 62; Dragica Rosenfeld, of Cakovec, aged 27; Hana Herberger, of Sarajevo, aged 67; Hana Papo, of Sarajevo, aged 22; Mazalta Pardo, of Sarajevo, aged 62; Erna Salom, of Travnik, aged 35; Estera Altarac, of Sarajevo, aged 42; Mirko Spieler, of Sarajevo, aged 15; Flora Walla-Markatic, of Bosanski Brod, aged 63; Rifka Baruch-Elazan, of Gracanica, aged 69; Rozalia Weiss, aged 67; Rahela Baruch, of Sarajevo, aged 70; Buena Kamhi-Maestro, of Sarajevo, aged 59; Vida Levi-Altarac, of Novo Sarajevo, aged 81; Erpura Levi-Poen, of Sarajevo, aged 60; Ema Pollak, of Velika Kaniza, aged 66; Simha Demajo-Finzi, of Travnik, aged 64; Sinha Baruch, of Travnik, aged 76; Lenka Spitzer, of Pecuj, aged 61; Sara Levi-Samokovlja, of Sarajevo, aged 76; Paula Adler-Singer, of Cegler, aged 57; Klara Altarac, of Sarajevo, aged 66; Roza Papo-Pinto, of Sarajevo, aged 51; Sarlota Hamburger, of Mrzovic, aged 57; Rahela Montiljo-Finzi, of Sarajevo, aged 62; Johanna Albahari, of Bijeljina, aged 38; Sida Albahari-Alkalaj, of Visoko, aged 50; Ernestina Perl, of Sarajevo, aged 35; Marija Stadler, of Brodjanice, aged 49; Rena Papo-Perera, of Sarajevo, aged 60; Estera Alkalaj,

of Sarajevo, aged 72; Blanka Maestro-Solzi, born at Timisoara, aged 31; Bukica Kohen, of Sarajevo, aged 29; Mariana Levi-Erera, of Sarajevo, aged 47; Gizela Firtl, aged 64; Blanka Papo-Maestro, of Sarajevo, aged 72; Berta Papo, of Sarajevo, aged 42; Sara Levi-Atias, of Sarajevo, aged 51; Gizela Schnitzler-Schmalz, of Djuric, aged 45; Redjica Montijo, of Mostar, aged 84; Sali Liebling-Spitzstein, born in Poland, aged 59; Sara Pinto, of Travnik, aged 76; Friderika Han-Levi, of Vinica, aged 47; Luna Levi, of Sarajevo, aged 70; Rahela Kambi-Danon, of Sarajevo, aged 64; Sidonija Schwabenitz-Benoic, of Subotica, aged 44; Blanka Altarac-Danon, of Sarajevo, aged 39; Zora Jelinek, of Blagorovo, aged 36; Frida Reiss, of Miskovac, aged 62; Rifka Altarac, of Sarajevo, aged 66; Sida Fusiel-Levi, of Sarajevo, aged 50; Matilda Trinki, of Travnik, aged 38; Frida Gruenfeld-Kaufmann, of Vrbica, aged 62; Blanka Salom-Baruch, of Sarajevo, aged 77; Rena Daniti, of Sarajevo, aged 53; Estera Altarac, of Sarajevo, aged 76; Estera Gaon-Papo, of Sarajevo, aged 61; Rahela Jokl, of Sarajevo, aged 70; Mazal Pinto, of Sarajevo, aged 63; Rena Levi-Altarac, of Sarajevo, aged 62; Julija Sunit-Neumann, of B. Palanka, aged 76; Sida Katanj-Altarac, of Sarajevo, aged 61; Klara Papo-Montiljo, of Sarajevo, aged 84; Sida Altarac, of Sarajevo, aged 43; Zaneta Snetrel, born at Polomeja, aged 66; Serafina Levi, born at Visegrad, age non-established; Klara Papo, born at Sarajevo, aged 46; Justina Ozno-Altarac, of Sarajevo, aged 55; Kambi-Vukas-Levi, of Zepce, aged 62; Rena Katanj-

Altarac, of Sarajevo, aged 64; Mirijana Eskenazi-Altarac, of Sarajevo, aged 62; Blanka Abinun, of Sarajevo, aged 19; Leontina Deutch, of Sl. Brod, aged 64; Roza Politzer, of Sonoklje, aged 73; Zumbuka Finzi, of Sarajevo, aged 63; Rahela Levi-Altarac, of Sarajevo, aged 66; Eugenija Graf-Taussig, of Konjscina, aged 64; Elza Eskenazi, of Slabonski Brod, aged 45; Gaon Rahela, of Sarajevo, aged 63; Klara Finzi, of Zenica, aged 21; Vera Davidovic, of Davor, aged 22; Flora Romano, of Sarajevo, aged 71; Ruzica Spitzer, of Turanovac, aged 40; Ritica Samokovlja-Altarac, of Sarajevo, aged 33; Stella Lustig, born at Vienna, aged 49; Luna Abinun-Finzi, of Sarajevo, aged 60; Teresa Buena-Gaon, of Visegrad, aged 75; Estera Atias, of Sarajevo, aged 66; Estera Altarac-Maestro, of Sarajevo, aged 51; Blanka Salom, of Travnik, aged 47; Lotti Laufer-Klimper, of Tuzla, aged 51; Blanka Blun-Abinun, of Tuzla, aged 63; Nana Konforti-Levi, of Visegrad, aged 65; Josefina Rechnitzer-Weiss, of Nasice, aged 42; Malvina Hechtz, of Nova Gradiska, aged 65; Rahela Levi-Pinto, of Vidinje, aged 37; Blanka Papo-Altarac, of Sarajevo, aged 60; Rena Kohn, of Pakrac, aged 48; Mazalta Hazan-Habiljo, aged 62, of Visoko; Vida Rosenfeld, born in Hungary, aged 65; Hana Salom-Ferera, of Sarajevo, aged 41; Ana Creif-Kornes, born at Lavov, aged 51; Klara Altarac-Levi, of Sarajevo, aged 89; Ovu Levi-Lazanj, of Sarajevo, aged 71; Blanka Bahan-Salom, of Sarajevo, aged 63; Estera Montiljo-Levi, of Sarajevo, aged 64; Regina Hausne, aged 45; Luna Levi, of

N. Bazari, aged 61; Keni Rosenberger, of Batava, aged 61; Adela Berger, of Zagreb, aged 59; Lunci Kabiljo, of Sarajevo, aged 42; Anica Spitzstein, of Prokupsko, aged 49; Simha Reli-Kamhi, of Sarajevo, aged 82; Klara Katanj-Eskenazi, of Sarajevo, aged 90; Rahela Levi-Papo, of Sarajevo, aged 54; Simha Kohen-Maestro, of Sarajevo, aged 70; Sara Levi-Papo, of Sarajevo, aged 65; Frizika Frelih, born at Rijeka, aged 34; Bazalta Pinto-Samokovlja, of Cajnice, aged 62; Julija Beherman-Pick, of Zagreb, aged 68; Jozefina Kohn-Sors, of Nasice, aged 79; Fanika Laus-Rosinger, of Kermen, aged 66; Janina David-Wadel, born at Lavov, aged 61; Mirka Altarac, of Bijeljina, aged 39; Paula Daniti-Romano, of Sarajevo, aged 37; Evica Vernes, of Pecuj, aged 42; Rifka Macoro, of Sarajevo, aged 66; Neham Atias-Montiljo, of Zenica, aged 41; Sofia Blau, of Sibinj, aged 61; Berta Romano-Salom, of Sarajevo, aged 41; Antonija Neuman-Blau, aged 58; Luna Levi, of Sarajevo, aged 51; Estera Kabiljo-Danon, of Bijeljina, aged 48; Blanka Adler-Atarac, of Mostar, aged 54; Honka Binfeld-Steiner, of Vrsac, aged 41; Luna Steiner-Kelerman, aged 64; Hermina Reis, of Kolomeja, aged 65; Luna Altarac-Papo, of Sarajevo, aged 64; Rena Salom, of Banjaluka, aged 61; Berta Finzi, of Travnik, aged 33; Estera Levi-Baruch, of Sarajevo, aged 49; Juliska Samlajic, born in Hungary, aged 61; Mazelta Kabiljo-Finzi, of Sarajevo, aged 66; Rena Glazer, of Sarajevo, aged 67; Blanka Altarac, of Biljeljina, aged 36; Ida Eisinger, born at Vienna, aged 61; Lea Finzi, of Sarajevo, aged 66; Mirijana

Ferera-Altarac, of Sarajevo, aged 40; Roza Gottesmann, of Slavonska Pozega, aged 41; Hana Hazan-Gaon, of Sarajevo, aged 27; Simha Pinto-Finzi, of Sarajevo, aged 61; Rozika Levi, of Sarajevo, aged 37; Klara Reibach, of Sarajevo, aged 67; Estera Sternberger, born at Kaloca, aged 58; Klara Finzi, of Zenica, aged 19; Blanka Altarac-Maestro, of Sarajevo, aged 60; Helena Fuchs-Hertman, born at Metz, aged 33; Rosa Deutch, of Vukovar, aged 73; Frida Nador, of Nova Gradiska, aged 23; Grazia Perera, of Sarajevo, aged 57; Ema Viamant, aged 74; Mazalta Abinun, of Travnik, aged 28; Rena Danon, of Sarajevo, aged 18; Jelica Sorger, of Pakrac, aged 22; Neumann Gizela, born in Hungary, aged 64; Klara Maestro, of Visegrad, aged 71; Dana Katanj, of Sarajevo, aged 32; Lea Sarina, of Sarajevo, aged 27; Gizela Kalderon, of Sarajevo, aged 27; Grazia Altarac, of Sarajevo, aged 42; Sara Atias, of Bugojno, aged 36; Estera Levi, of Sarajevo, aged 42; Beti Sveher, of Visegrad, aged 61; Vera Finzi, of Beograd, aged 35; Simha Papo, of Sarajevo, aged 66; Paula Albahari, of Sarajevo, aged 27; Klara Pfefferd, of Lipik, aged 46; Simha Altarac, of Sarajevo, aged 65; Erna Kajon, of Sarajevo, aged 24; Zumbula Salom, of Travnik, aged 47; Rifka Samokovlja, of Derventa, aged 62; Mazalta Levi, aged 65; Rifka Montiljo, of Visoko, aged 39; Erna Kohen, of Zenica, aged 28; Klara Abinun, of Sarajevo, aged 36; Irena Rudenki, aged 65; Hermina Kenig, of Velika Kaniza, aged 64; Grazia Perera, of Travnik, aged 54; Matilda Alkalaj, of Travnik, aged 63; Rahela Montiljo, aged 16;

David Atias, of Sarajevo, aged 19; Rahela Levi, of Travnik, aged 65; Cipura Levi, of Zenica, aged 35; Danka Gaon, of Sarajevo, age non-established; Katinka Kraus, of Cerevic, aged 64; Samka Kamfi, aged 16; Mehama Levi, of Tesanj, aged 46; Esperanza Musafia, of Sarajevo, aged 61; Sarlota Noshes, of Slavonski Brod, aged 59; Ana Reich, of Uljanica, aged 33; Matilda Kenig, aged 48; Sarika Kamhi, of Sarajevo, aged 18; Elisa Reich, of Uljanica, aged 25; Klara Maestro, of Bosanski Brod, aged 62; Mazalta Levi, of Sarajevo, aged 62; Rahela Kajon, of Sarajevo, aged 61; Flora Kamhi, of Sarajevo, aged 54; Berta Golfinger, of Djakovo, aged 47; Mira Silink, born in Poland, aged 57; Rahela Gaon-Maestro, of Sarajevo, aged 62; Sida Baruch, of Sarajevo, aged 31; Vera Balas, of Zagreb, aged 19; Sofia Simbula-Slinka, born in Hungary, aged 30; Hermina Kenig, aged 64; Erzi Bross, of Daruvar, aged 35; Sinjora Atias, of Sarajevo, aged 42; Ernestina Goldstein, of Djakovo, aged 66; Lenka Tesah, of Sarajevo, aged 52; Johana Seligmann, born at Budapest, aged 35; Rifka Papo, of Zepce, aged 60; Anita Spitzner, of Uranovac, aged 38; Klara Kohen, of Sarajevo, aged 36; Bianca Pinto, of Sarajevo, aged 31; Cecilija Hirschl, of Murska Sobota, aged 53; Lotika Baruk, of Sarajevo, aged 20; Estera Altarac, of Sarajevo, aged 76; Flora Altarac, of Travnik, aged 66; Mirijana Kambi, of Sarajevo, aged 22; Dzential Maestro, of Sarajevo, aged 75; Blanka Gaon, of Sarajevo, aged 54; Vera Schwabelitz-Bencic, of Zagreb, aged 19; Sara Katanj, of Travnik, aged 52; Blanka Danon,

of Sarajevo, aged 19; Regina Eskenazi, of Sarajevo, aged 54; Regina Kavo, of Derventa, aged 36; Simha Salom, of Derventa, aged 67; Flora Levi, of Sarajevo, aged 35; Margita Zorger, of Virovitica, aged 42; Olga Bajnhadzer, born in Hungary, aged 51; Rahela Salom, of Travnik, aged 47; Ella Kalaf-Papo, born at Vienna, aged 56; Sara Montiljo, of Sarajevo, aged 56; Blanka Daniti, aged 55; Alice Nauman, born at Vienna, aged 42; Cukolina Salom, aged 66; Lujza Pinto, aged 52; Selma Rosenzweig, of Sl.Brod, aged 61; Flora Levi, of Sarajevo, aged 32; Rebeka Pinto, of Sarajevo, aged 57; Rena Misin-Papo, of Sarajevo, aged 57; Helena Mandl, of Djakovo, aged 61; Sida Abinun, of Sarajevo, aged 35; Mirjana Kabiljo, of Sarajevo, aged 36; Rifka Levi, of Sarajevo, aged 72; Olga Singer, of Sarajevo, aged 64; Rahela Kohen, of Sarajevo, aged 85; Rahela Abinun, of Sarajevo, aged 54; Rifka Kaljon, of Visegrad, aged 59; Erna Levi, of Travnik, aged 25; Klementina Polla, born in V. Karpat, aged 72; Roza Mandenbaum, of Sarajevo, aged 34; Lotte Weiss, aged 61; Loti Abinun, of Jajce, aged 28; Flora Altarac, of Sarajevo, aged 36; Rasela Altarac, of Bjeljina, aged 47; Fanika Sallinger, aged 58; Matilda Albanhari, of Sarajevo, aged 46; Olga Papo, of Sarajevo, aged 44; Estera Atijas, of Sarajevo, aged 59; and Elizabeta Samok, of Ludbreg, aged 31;

The remaining 1,500 women and children approximately whose identity was not established were transferred from Djakovo when the camp there

was liquidated, to the Jasenovac concentration camp where they were killed.

47 Serb-Orthodox priests, to wit; priest Milan Bozic, religious teacher of Sarajevo; priest Bogdan Lalic, of Sarajevo; priest Jovan Zec, parson of Vozuce village; bishop Sava Trlajic; priest Djuro Alagic, parson at Gornja Dubrava; Jovan Bjegovic, religious teacher of Bihac; Nikola Bogunovic, parson of Donji Lapac; Danilo Brakus, parson of Bjelo Polje; Petar Vucinic, member of the Church Court of Plasko; Milan Dklic, parson of Kosinje; Milan Dokmanovic, priest and parson at Plasko; Milojko Dosen, parson of Pocitelje, Gospic District; Vladimir Dujic, parson and Arch-Episcopal Deputy of Srpske Moravice; Milan Djukic, Secretary of the Episcopal Board; Gligorije Zivkovic, parson of Bacuga; Ilija Iljic, retired member of the Church-Court; Dimitrije Jelkovic, parson of Siroka Kula; Teofan Kosanovic, Abbot of the Gomirje Monastery; Djuro Marijan, parson of Senj; Dositej Obradovic, Deacon of Plasko; Ilija Pavlica, parson of Munjava, District Ogulin; Vujadin Panjekovic, parson of Debelo Brdo; priest Milan Rajcevic, of Plasko; Uros Rajcevic, parson of Mogoric; Petar Raceta, parson of Bunic; Radivoje Stanisavljevic, parson of Korenica; Matija Stijacic, parson of Smiljane; Jasa Stepanov, parson of Plasko; Metodije Subotin, Abbot; Stevan Curcic, parson of Okulin; Nikola Ban, religious teacher of Bjelovar; Dr. Branko Barac, parson of Sisak; Lazar Zivadinovic, Deacon; Adam Marin, parson of

Koprivnica; Djordje Milojevic, parson of Novi Pavljani; priest Dusan Krnjevic; Vojislav Gasic, parson of Tunjevac; Mihajlo Jovanovic, retired priest of Brodac; Mihajlo Jovanovic, parson of Mackovac; Ljubomir Krnjic, parson of Brodac, Bjeljina District; Jovan Magarasevic, Episcopal Deputy and parson at Tuzla; Milorad Pekic, parson at Sibosnica; Savo Popovic, parson of Brezovo Polje, Brcko District; Platon, Bishop of Banja Luka; Slavko Zialic, parson of Paklenica; Pantelija Landup, parson of Strijezevica; and Jovan Stojanovic, priest, Episcopal Deputy and member of the Church Court at Pakrac.

48 rabbis and cantors of the Jewish religion, to wit: Dr. Deutshem, rabbi at Ludberg, aged about 70; Dr. Simon Ungar, rabbi of Osijek, aged about 60; Hinko Gruenwald, rabbi at Podravska Slatina, aged about 95; Ilija Gruendwald, Chief Rabbi at Cakovac, aged about 55; Miroslav Freiberger, Chief Rabbi at Zagreb, aged about 40; Dr. M. Heisz, Chief Rabbi at Sisak, aged about 60; Dr. Rudolf Gluech, rabbi at Varazdin, aged about 70; Dr. N. Kohn, rabbi at Koprivnica, aged about 58; David Meissl, cantor at Karlovac, aged about 55; Leo Wolfenzon, cantor at Koprivnica, aged about 55; Izidor Dolf, cantor at Bjelovar, aged about 45, Leon Katan, cantor at Brcko, aged 66; Leopold Katz, rabbi and cantor at Daruvar, aged about 65; Gilman Josip, rabbi and cantor at Daruvar, aged about 65; N. Schwartz, rabbi and cantor at Donji Miholjac, aged about 45; Salamon Baruch, rabbi and cantor at

Dubrovnik, aged 42; Alexander Roth, cantor at Dajakovo; N. Roth, rabbi at Murska Sobota, aged about 70; Lavoslav Buchsbaum, Chief Cantor at Krizevci, aged 72; David Perera, rabbi at Mostar, aged about 40; Jakov Schmelzer, cantor at Nasice, aged about 35; Andrija Trilnik, rabbi at Nova Gradiska, aged about 30, Paul Froehlich, Chief Cantor at Osijek, aged 28; Isidor Guren, cantor at Osijek, aged about 60; Izak Freides, rabbi at Pakrac, aged about 55; Jakov Klinkovstajn, Chief Cantor at Sisak, aged about 65; Mordeschsil Rikow, rabbi at Slavonska Pozega, aged about 70; Boris Selfe, Chief Cantor at Slavonski Brod, aged 32; Izak Finzi, rabbi at Split; Otto Deutsch, rabbi at Susak; Izak Baruch, rabbi at Travnik; Jakov Kohn, cantor at Varazdin; N. Kohn, rabbi and cantor at Banja Luka; Mijo Propper, Chief Cantor at Vinkovci; aged about 60; Izidor Hersmovic, cantor at Vinkovci, aged about 60; Adolph Springer, Chief Cantor at Virovitica, aged about 45; Vijoslav Mandel, cantor at Vukovar, aged 32; Josip Weissmann, Chief Cantor in pension of Zagreb, aged 73; M. Loewy, Dean and Professor at the School for rabbis at Zagreb, aged about 70; Eugen Mandel, Cantor at Zagreb, aged about 35; Lavoslav Kahn, cantor of the Orthodox Jewish Community at Zagreb, aged about 45; Samuel Singer, cantor of Zagreb, aged about 65; David Atijas, cantor of Zagreb; Arnold Basch, cantor of Zagreb, aged about 27; Dragutin Vogel, cantor of Zagreb, aged 27; Dr. N. Schlank, Chief Rabbi at Beograd, aged about 55; N. Gross-

mann, Chief Cantor of Beograd, aged about 55; Ignaz Klein, rabbi at Pancevo, aged 48.

By his acts described in points 1 to 8 the accused Artukovic committed the crime of murder provided for in Article 135, para. 2, in reference with Article 19, para. 1, of the Criminal Code of February 27, 1951. (Also provided for in §167, para. 2, points 1 and 2, in reference with §34, para. 1 of the Criminal Code of January 27, 1929) punishable under the same provisions with reference to Article 90, para. 2. of the Criminal Code and Article 9 of the Introductory Law of the Criminal Code.

Motion to the Court

(1) With reference to the above stated that after the extradition of the accused Andrija Artukovic who is now abroad, is carried out, a trial be ordered before the County Court at Zagreb, as competent, both as to jurisdiction and venue under the provision of Article 22, point 1 and Article 26, points 1 and 2 of the Law on Criminal Procedure and the accused be brought to trial;

(2) that a defense counsel be appointed for the defendant by virtue of office insofar as he himself does not appoint one;

(3) that the following evidence be examined at the trial, viz.:

(a) that the following persons be examined as witnesses: Hassan Hadzi Osmanovic of Zenica;

Kosta Curcic of Sarajevo; Dr. Bogdan Zimonic of Sarajevo; Professor Milan Radek of Karlovac; Zlatko Mesic of Zenica; Alija Koso of Stolac; Hassan Kusturica of Stolac; Mijat Kovacevic of Gacko; Arif Zvizdic of Gacko; Djordje Milosevic of Gacko; Zecir Dzubur of Kula; Atif Dzubar of Branilovic; Rade Boljanovic of Avtovac; Mirko Solaja of Miholjaca; Bozo Barbaric of Vel. Ogradjenik; Ante Prusina of Zitomislic; Filip Barbaric of D. Dragicina; Mara Bulut of Capljina; Stevo Bulut of Prebilovci Mujo Sjekirica of Celjevo; Danilo Bulut of Prebilovci; Ivo Colic of Mostar; Ismet Levic of Mostar; Bogdan Karisik of Mostar; Ksenija Butic of Mostar; Omer Mufic of Zenica; Nenad Privcevic of Lipac; Mujko Ahmetovic of Potocane; Kristo Glumsic of Krizevac; Anka Ilibasic of Tenj; Kajica Kicos of Dalj; Antun Stajn of Dalj; Ivan Arh of Vrbanje; Zarko Milosevic of Zupanje; Milos Petrovic of Bosnjak; Milan Radosavljevic of Novi Jankovac; Stevan Teofilovic of Novi Jankovac; Andrija Lucic of Novi Jankovac; Marko Kovacevic of Vinkovci; Stjepan Softa of Cerne; Milan Mijaljevic of Vukovar; Stevo Mitrovic of Novi Jankovac; Izidor Nikolic of Vukovar; Dusan Cvetic of Vukovar; Milan Urosev-Nikolic of Bobote; Milan Nikolic of Trpinje; Danica Nikolic of Negoslavac; Ivan Bauer of Strizivojne; Stjepan Ivic of Valpovo; Nikola Petrovic of Valpovo; Ladislav Suhi of Petrijevac; Josip Petrov of Satnice; Stjepan Mitrovic of Bistrinac; Stejpan Dosen of Bizovac; Janko Nikolic of Donji Miholjac; Jozo Nikolic of Viljevo; Mato Vidakovic of Podravski

Podgajac; Milan Zvonaric of Sveti Djurdje; Martin Majstorovic of Podravske Moslavine; Ilija Korov of Radikovac; Vuka Radeka of Karlovac; Dr. Pavle Vinski of Osijek; Franjo Osthajmer of Djakovo; Prof. Kamilo Bresler of Zagreb; Djordana Fridlender of Zagreb; Bishop Nikanor of Beograd; Bishop German of Beograd; Bernard Gruener of Zagreb; Jakob Danon of Zagreb; Egon Berger of Zagreb; Dr. Pavao Spitzer of Zagreb; Ing. Valter Fiser of Zagreb; Rudi Sekulic of Zagreb; Adolf Schwarzenberg of Zagreb; Irif Balta of Sarajevo; Bosnjak Stipe of Knezpolje; Zvonimir Polic of Sremska Mitrovica; Franjo Truhar of Sremska Mitrovica; Dr. Vladimir Boroveak of Zagreb;

(b) that the following documentary evidence be read: List of Orthodox priests killed in concentration camps, drawn up by the Archiereusian Synode of the Serb-Orthodox Church; the list of Orthodox priests killed in Croatia, Bosnia and Herzegovina, drawn up by the Archiereusian Synode of the Serb-Orthodox Church; the so-called legal orders of May 4, 1941, of August 16, 1941, of November 25, 1941, of July 20, 1942, of August 3, 1942, as well as the speech delivered by the accused Artukovic in the so-called Sabor and published in the "Nardne Novine" of February 25, 1942, (photostatic copies are attached); to examine six photographs of children from concentration camps which are attached to the testimony of Prof. Kamilo Bresler;

(4) that after the trial the accused Andrija Artukovic be proclaimed guilty for all the offenses mentioned in the indictment and punished according to Law.

In Explanation of the Indictment

The mass crimes of murder, presented in the body of this indictment, and the responsibility of the accused Andrija Artukovic for their commission, have been established by extensive evidence, consisting, primarily, of credible testimony by witnesses given under oath before competent Courts and also by authentic documents.

This evidence unequivocally establishes that, after having arrived in Yugoslavia in April, 1941, with the German invaders and enjoying their protection, the accused Artukovic ordered and caused numerous crimes of murder in the course of 1941 and 1942, often committed in the cruellest possible way and accompanied by terrible maltreatment of the victims and the plundering of their property. At that time (from April 16, 1941, to October 10, 1942) the accused Artukovic was the so-called Minister of the Interior in the "Cabinet" of Ante Pavelic.

The individual and group crimes listed in the body of the indictment are arranged chronologically as they were committed by the accused Artukovic. During this entire period, he issued instructions

committing the people of Yugoslavia to concentration camps and ordering their death.

As early as May, 1941, the accused Artukovic ordered that the head of the Dabro-Bosnian Eparchy, the central of which was in Sarajevo, Metropolitan Petar Zimonjic, be taken into custody, sent to an concentration camp and killed there, which order was carried out. (Point 1 in the indictment), Witness Hasan Hadziosmanovic testified that Hakija Hadzic, Pavelic' so-called Commissioner for Bosnia and Herzegovina, had told him personally that the Metropolitan has been arrested at the express order of the accused Artukovic. Witness Zlatko Mesic testified that early in 1942 Artukovic had said in his presence, in Zagreb, that he had had Zimonjic removed. Witnesses Kosta Curcic, Dr. Bogdan Zimonjic and Professor Milan Radek testified to the arrest of Metropolitan Zimonjic, to his internment in the concentration camp, to the cruel maltreatment to which he was subjected and to his murder in the Summer of 1941.

Through the testimony of witnesses it has also been unequivocally established that the accused Artukovic, in the further course of 1941 and 1942, ordered and caused the murder of many thousands of men, women and children, citizens of Yugoslavia, including the extermination of thousands of families together with their children, even newborn infants. To this end, he sent his trusted men to various parts of occupied Yugoslavia with the order

to kill, which they did or he gave these same men written instructions of the same type, or he ordered the mass internment of citizens and their families to concentration camps with the aim of killing them in cruel ways.

The accused Artukovic sent Mijo Babic and Kreso Togonal to Herzegovina (Point 2 of the indictment) with the order to kill citizens of Serbian nationality; this was established from the testimony of Zlatko Mesic, who also testified that Togonal himself told him, in July, 1941, when leaving Herzegovina for Zagreb via Sarajevo, that the number of murdered people amounted to several thousands and that he was taking Artukovic a report about the killings. Upon return to Sarajevo, after submitting the report, Togonal told this witness that the accused Artukovic had not been satisfied with the killings because many persons who should have been killed at his orders had succeeded in escaping to Montenegro. The murders that were committed on that occasion by Mijo Babic, Kreso Togonal and by their band of criminals, as well as the torturing and plundering of their victims, has been described in detail by many witnesses under oath, most of whom were eye-witnesses to the crimes. The crimes described under Point 2(a) in the body of the indictment were testified to by witnesses Alija Koso and Hasan Kusturica; under Point 2(b) by witnesses Mijat Kovacevic, Arif Zvizdic, Djordje Milosevic and Zecir Djubur; under Point 2(c) and 2(d) by Atif Dzubur, Zecir Dzubur and

Djordje Milosevic; under Point 2(e) by witnesses Rade Boljanovic and Zecir, and under Point 2(f) by witness Mirko Solaja.

The murders committed in the months of June and July, 1941, in a part of Herzegovina (Point 3 of the indictment) were also expressly ordered by the accused Artukovic, which has been established by the testimony given by Bozo Barbaric, who said that as the then County chief of Cerin in the Mostar District, he had in June, 1941, received a written order from Ivo Hocevac, the so-called Commissioner for the Grand Zupa of Hum, who had been appointed to that position by Artukovic himself, to the effect that all Serbs—men, women and children— were to be killed in the shortest possible time. The order explicitly stated that these murders were to be committed according to Artukovic's directive. Immediately after the order had been issued, murders were committed throughout the entire so-called Grand Zupa of Hum, some of which have been described under Point 3 of this indictment. The crimes described under Point 3(a), (b), and (c) were testified to by witness Bozo Barbaric, while the crime under 3(c) was testified by witness Ante Prusina. The murder of Serbian Orthodox clergymen in the Zitomislic Monastery, described under Point 3(c), has also been confirmed by witnesses Bishop Nikanor and Bishop German, and by a document from the Archiereusian Synod of the Serbian Orthodox Church, attached to the indictment. After these murders had been com-

mitted according to his orders, the accused Artuković gave his express approval of them and incited those who had participated in them to new crimes, which has been established by witnesses Bozo Barbarić and Filip Barbarić, of whom both declared that Simun Buntić, who had taken part in the murders described under Point 3(a) and (b) and very probably also in the murder of the clergymen from the Zitomislić Monastery (Point 3(c)), had said that after these killings he reported to Artuković in Zagreb, who asked him how many Serbs he had killed. Upon answering that he had killed two, the accused Artuković retorted: "If you haven't killed 200 Serbs, you needn't have come to me at all."

The direct responsibility of the accused Artuković for the murders committed by Franjo Vego and his group in the villages of Prebilovac and Tasovčići (Point 4 of the Indictment) is established by the testimony of the witness Zlatko Mesić. He stated that he had learned from Ante Stitić, one of the foremost associates of Pavelić and Artuković, to whom Vego himself had said this, that the accused Artuković had personally given Franjo Vego the order to go to the Mostar-Metković sector and kill citizens of Serbian nationality. According to the testimony of the witness, Vego was then working in the "Office" of the accused Artuković. The massacre of men, women and children, the torturing, rape and plundering carried out by Vego's

group is described by witnesses Mara Bulut, Stevo Bulut, Mujo Sjekirica and Danilo Bulut.

Testimony given by Zlatko Mesic has also established that the accused Artukovic issued an order to Ivan Herencic to murder citizens in Mostar (Point 5 of the Indictment). The eye-witnesses of the killing of many Serbs, Croats, Jews and other inhabitants of the town of Mostar by Herencic, described under this Point of the Indictment, are Ivo Coric, Ismet Leric, Bogdar Karisnik and Ksenija Gutic.

Incriminations under Point 6 of the Indictment are proven by the testimony of witness Omer Muftic. He was personally present when the accused Artukovic told a number of people who had come to him from the Doboj District, that he had seen to the complete extermination of the Serbian population and that all of Ozren and all the Serbian villages in the vicinity would be liquidated even before their return to Doboj, so that "of the evil race (referring to the Serbs) no offspring would remain, not even a babe in the cradle". The witness states that immediately afterwards an armed group arrived on Mount Ozren, sent there by Artukovic, and began to kill the population of the villages on the mountain and to burn and plunder the property of the peasants. The massacre of many women, children and aged has been described by witnesses Nenad Pivcevic and Mujko Ahmetovic.

Apart from the facts brought out above, there is a series of other facts testified to by witnesses

who have been given a hearing, which show that the accused Artukovic had in other cases also issued orders for the commission of murders, that he had often expressly approved of large scale massacres, praised the perpetrators and incited them to new crimes. For instance, Zlatko Mesic stated that toward the end of 1941 the accused Artukovic had expressly ordered the so-called Commissioner for Basnai and Herzegovina, Jure Francetic, and—in the presence of Pavelic—several times reiterated that he did not want any surrenders, or concentration camps, or Serbs in Eastern Bosnia, which denoted an overt order for the complete extermination of the local population. The witness further states that on reporting to Artukovic in Zagreb, early in 1942, Artukovic had rebuked Francetic in his (the witness') presence for not following his orders, emphasizing that he refused to have any Serbs in Eastern Bosnia, or in any part of Croatia.

The accused Artukovic bears full responsibility also for the large scale internment of almost all families of Tzigan descent in Croatia, Bosnia and Herzegovina in the ill-famed concentration camp in Jasenovac and for their extermination in that camp (Point 7 of the Indictment), because he personally issued the orders for the commission of these crimes. This is proven in the first place by the statement made by witness Kristo Glumcic, who testified that he at the so-called District Head in Osijek had received an order in the middle of 1942 signed personally by the accused Artukovic directing him

to arrest all citizens of gypsy origin regardless of sex or age. Witnesses Anka Ilibasis and Kajica Kicos saw the gypsies being taken to camp from the District of Osijek. Witnesses Ivan Bauer and Stjepan Iljic also saw that, at the same time, an order was issued for the arrest and internment of gypsies in concentration camps in the Districts of Djakovo and Valpovo as well as in the District of Osijek by the District authorities, the authorities directly subordinate to Artukovic. Many other witnesses have also stated that in other Districts, where gypsies lived, during that period (mostly in May, 1942) all gypsy families were sent to the Jasenovac concentration camp from which they never returned. The witnesses further state that these families who had been living peacefully in the various towns and villages for decades, had been, for the most part, farmers and tradesmen, mostly basket-makers and potters. Equally, many witnesses, who were in the concentration camp of Jasenovac, stated that in the month of May, 1942, large groups of gypsies started arriving in the camp, among whom there were many women and children and even infants, and that they were killed in that camp shortly afterwards in the cruellest possible ways. The evidence also contains the statements of several witnesses who were taken to Jasenovac with these groups, and have succeeded in saving themselves. Their statements coincide regarding the killing of gypsies. Witnesses who were eye-witnesses of these mass murders in the camp are of the opinion that 30,000 members of the above-mentioned

families were brought to Jasenovac and killed in a short period during the middle of 1942, this number corresponding approximately to the number of citizens of Tzigan descent who lived in Croatia, Bosnia and Herzegovina at that time. Very rarely did any individual succeed in evading these massacres. It has thus been established that citizens of gypsy origin from the whole territory of Croatia, Bosnia and Herzegovina, were sent to concentration camps and killed on the basis of an order issued by the accused Artukovic—similar to the one sent to the District of Osijek. The witnesses who described the commission of this crime are: Anka Ilibasic, Jajica Kicos, Antun Stajn, Ivan Arh, Zarko Milosevic, Milos Petrovic, Milan Radosavljevic, Stevan Teofilovic, Andrija Lucic, Marko Kovacevic, Stjepan Softa, Milan Mihajlevis, Stevo Mitrovic, Izidor Nikolic, Dusan Cvetic, Milan Nikolic-Urosev, Milan Nikolic, Danica Nikolic, Ivan Bauer, Stjepan Iljic of Valpovo, Nikola Petrovic of Valpovo, Vladislav Suki of Petrijevci, Josip Petrov of Satnica, Stjepan Mitrovic of Bistrinci, Stjepan Dosen of Bizovci, Janko Nikolic, Joze Nikolic, Marko Vidakovic, Milan Zvonaric, Martin Majstorovic, Ilija Korov, Jakov Danon, Egon Berger, Rudi Sekulic, Engineer Valter Fiser and Dr. Pavao Spitzer.

Direction and control over the concentration camps, over the internment of people in the camps and over the treatment (Point 8 of the Indictment) was discharged, along with Pavelic, by the accused

Artukovic who was the so-called Minister of the Interior in Pavelic's "Cabinet" at that time. This has been established through numerous so-called legal and other kinds of orders which were prepared by the accused Artukovic himself, which he issued and signed alone or together with Pavelic. According to these "orders", the accused Artukovic was the one who took the decisions on precedure connected with concentration camps. (Photostats of the "orders" are attached). This has also been corroboated by witnesses Zlatko Mesic, Hasan Hadziosmanovic, Bozo Barbaric, Franjo Truhar, Zvonimir Polic, Arif Balta, and Vuka Radeka.

The accused Artukovic together with Pavelic prescribed a so-called legal order on August 16, 1941, on the "Ustasha Security Service" which under the "Legal Order" of November 25, 1941, controlled concentration camps and passed decisions on deportation to these camps. Under Article 7 of the "Legal Order" on the Ustasha Security Service, its organization and method of work was prescribed by the "Ustasha Chief of the Security Service" with the approval of the "Ministry of the Interior", namely of Artukovic. The "Ustasha Security Service" under the "Legal Order" of August 3, 1942 (which was also issued and signed by Artukovic and Pavelic), passed decisions on deportation of members of the families (wives, children, parents, brothers and sisters) of different persons to concentration camps where they were then killed. According to the "Legal Order" of

July 20, 1942, which the accused Artukovic had issued and signed together with Pavelic, authorization to depart people to concentration camps was granted for a time also to the "Directorate for Public Order and Security". The "Directorate for Public Order and Security" had been set up by the accused Artukovic on the grounds of a specially issued and signed "Order" of May 4, 1941, which under Article 2 of the mentioned "Order" was a section of Artukovic's "Ministry of the Interior", and subordinate to him. The above-mentioned bodies which Artukovic has organized either alone or together with Pavelic ("the Directorate for Public Order and Security", and the "Ustasha Security Service"), deported people to concentration camps even before the mentioned "Legal Order" had been issued.

Numerous witnesses testified on oath in Court that, apart from this, the accused Artukovic had in many cases ordered large scale and individual deportations of citizens to concentration camps with the purpose of having them killed there. In addition, to the already cited cases under Point 1 (the murder of Metropolitan Zimonjic) and under Point 7 (of the indictment) the mass extermination of citizens of gypsy origin, many other cases have also been established that the accused Artukovic had ordered mass and individual deportation to concentration camps and executions in these camps, and that the accused Artukovic had explicitly approved murders committed in concentration camps.

Thus, according to the testimony of the witness Zlatko Mesic, one of Pavelic's closest associates, and his so-called commissioner for Bosnia and Herzegovina, Jure Francetic, told Mesic that he had been to see the accused Artukovic and that the latter, in connection with some protests against numerous murders, had ordered the murders not to be carried out so openly, but in a more covered manner, namely, by deporting citizens to concentration camps where they would be killed.

Witnesses Hasan Hadziosmanovic, Alif Barta and Zlatko Mesic testified that the Chief of Police in Sarajevo, Tolj, had been personally entrusted by Artukovic with the task of deporting citizens to concentration camps where they would be killed. Witness Hadziosmanovic testified that the accused Artukovic had personally rebuked him for not helping Tolj to enforce the measures by which all undesirable persons would end up (i.e. be killed) in the Jasenovac camp. Tolj himself who enforced these measures stated in Hadziosmanovic's presence that he never did anything without Artukovic's approval. When Jure Francetic, the so-called Commissioner for Bosnia and Herzegovina, had Tolj arrested and deported to Zagreb—fearing that the unparalleled terrorism which Talj was exercising in Sarajevo would lead to open revolt among the people, Artukovic immediately released him, called the organizers of the arrest to account, and appointed Tolj as Chief of Police in Vinkovci, where the latter continued to terrorize the population.

Witnesses Omer Muftis, Stjepan Bosnjak and Bozo Barbaric testified that Artukovic had declared in their presence that he had taken measures for the complete extermination of the Serbs, and that all Serbs should be killed. In the presence of the witness Barbaric, the accused Artukovic has explicitly approved the murder of Serbs, saying that this had been bound to happen. When the witness Barbaric objected to this, Artukovic wanted to have him arrested. An agent warned the witness to keep away because Artukovic had issued a warrant for his deportation and that of some other citizens to a concentration camp.

The witness Franjo Truhar testified that, in connection with the deportation and massacre of Jews in the summer of 1941, the accused Artukovic had declared in his presence: "You see, we solved the Jewisn question more efficiently and quickly than Hitler. There is no Jewish problem today." After the massacre of Jews in concentration camps, and their almost complete extermination in these regions, the accused Artukovic submitted a report to the so-called Sabor towards the end of February, 1942, on his activity up to then, stating on this occasion that "the so-called Jewish question had been solved with a resolute and sound stroke" (excerpt from the "Narodne Novine" of February 25, 1942, No. 46, Page 7 and the following; a photostat is attached).

How the accused Artukovic ordered killings in the concentration camps and the plunder of the

property of his victims, is also proved by the case of Dr. Jesa Vidic, a lawyer from Sremska Mitrovica. He was interned in a concentration camp and the witness Franjo Truhar interceded in his favor. On that occasion he gave Artukovic a petition written by Vidic's wife in which she offered to give half of her property for the release of her husband. Upon being told what the petition was about, Artukovic said: "What has he to give us half of his estate for, when we shall kill him and take the whole of it." Dr. Vidic was, indeed, killed in the camp and his whole property confiscated.

The following two cases are also characteristic of the activity of the accused Artukovic in connection with crimes committed in concentration camps:

The witness Matko Mesic testified that the accused Artukovic had in his presence, rebuked Pavelic's "general" Simic for not being severe enough and for leaving certain undesirable families at peace, instead of having them killed or deported to concentration camps.

The witness Zvonimir Polic, at that time was deputy head of the so-called Zupa Police in Nova Gradiska, was ordered to be deported to a concentration camp by the accused Artukovic for having dared to submit a written report to him on the murder, plunder and deportation to camps of the entire population of the village of Mlaka, in the District of Novska, among whom many women and children. The witness Polic was released from the concentra-

tion camp only when the accused Artukovic as no longer the so-called Minister of the Interior.

The accused Artukovic would personally inspect the concentration camps, which is confirmed by the testimony of witness Vuka Radek, who stated that the accused Artukovic, whom she knew well personally, had in August, 1942, come to the camp in Stara Gradiska, where she was interned, bringing a commission with him for the supposed purpose of examining the camp. Before the commission arrived, all aged men and women, children and all sick persons, were killed, detaining only the more healthy, who had to work when the commission arrived, so that Artukovic might create the impression among the members of the commission that it was a labour camp, and conceal the atrocities which were committed over the internees who—as is indicated by the foregoing—had been sent to the camp on his orders for the purpose of gradual and concealed liquidation.

It has been established, on the grounds of authentic evidence, that together with Pavelic, the accused Artukovic turned the concentration camps into torture chambers and execution grounds for the citizens of Yugoslavia, which in fact was the purpose of their foundation. The murder of perfectly innocent people in these camps (especially women, children and old people), was carried out without any judicial or other proceedings. Before being put to death, the prisoners were tortured in the cruellest manner. The killing was committed with axes, mal-

let, starvation, infectious disease, etc. Thus, over 200,000 persons had been killed in the concentration camps up to the beginning of October, 1942, only. The body of this indictment under Point 8 gives but an insignificant part of the individually identified children and women, whose murder was ordered and caused by the accused Artukovic.

The murder and torture of children was confirmed equally by the witnesses Professor Kamilo Bresler, Dr. Pavao Spitzer, Jakob Danon, Vuka Radek, Dzordana Friedlaender and Adolf Schwarzenberg. After the intervention of the International Red Cross, Professor Bresler was able to establish touch with one part of the children from these camps, while the other witnesses had themselves been prisoners in the camps and as such were eye-witnesses of the tortures and murders. The substantiated testimony of witness, Professor Bresler, established that, according to the data he had managed to collect, some 15,600 children and new-born babies had lost their lives in concentration camps up to the middle of 1942. This figure is, however, actually far larger because, as stated by the witness Professor Bresler himself, it does not include the children of Jews and Tzigany who were killed immediately upon their arrival in the camp, nor the children who were taken with their mothers from the concentration camp in Dajkovo to the camp in Jasenovac, nor does it include the other children who were killed as soon as they arrived at the camp (such as, for example, about 2,000 children

poisoned with insecticide gas in August, 1942, in the Stara Gradiska camp, which is confirmed by the testimonies of the witnesses Dzordana Friedlaender and Vuka Radek). Interned children were killed by starvation, with caustic soda mixed with their food, by infectious diseases, poison gas, etc.

The torture and murder of children and women in the Djakovo concentration camp was confirmed by the witnesses Franjo Osthajmer and Dr. Pavle Vinski. Witness Franjo Osthajmer testified that, while burying prisoners from the women's and children's camp, as a gravedigger in Djakovo, he had seen traces of torture and murder with cruelty on the corpses. Witness Dr. Pavle Vinski in his testimony named some of the victims of the mentioned Djakovo concentration camp, as well as some of the victims from the other camps.

The murder of priests whose names are included in the body of this indictment has been established by the testimonies of the witness Bernardo Bruner, of Bishops Nikanor and German, as well as by authentic lists supplied by the Archiereusian Synod of the Serbian Orthodox Church.

Besides the above-mentioned testimonies of other witnesses, the witness Dr. Vladimir Borovcak corroborated the plunder of property belonging to murdered citizens.

It should be stressed that the number of crimes committed at the order of the accused Artukovic is

far greater than cited in the body of this indictment, and the witnesses of these crimes far more numerous. However, the facts given in the indictment and the evidence deduced from them, undoubtedly offer a clear picture of the criminal features of the accused Artukovic and his guilt for the crimes committed.

With the offenses described above, Artukovic committed a series of gravest crimes against the life and physical integrity of the citizens of Yugoslavia for which he is responsible both according to stipulations of the Criminal Legislation of Yugoslavia and according to the Legislation of all civilized states.

Under the Criminal Code of January 27, 1929, these crimes of murder were incriminated in Art. 167, Para. 2, Point 1 and 2 with reference to Article 34, Para. 1.—The Criminal Code of January 27, 1929, in its Article 2, contained the provision that in case of a change of the Criminal Code after the crime committed (provided no sentence had been passed up to that time), the more lenient of the two laws should be applied. An identical provision is contained in Article 90, Para. 2, of the new Criminal Code of February 27, 1951, which is now in force in the Federal People's Republic of Yugoslavia.

In view of the fact that after the commission of the crime the Criminal Code has been changed, it is therefore necessary to establish which Criminal

Code, pursuant to Article 2 of the Criminal Code (of January 27, 1929) and Article 90, Para. 2, of the Criminal Code (of February 27, 1951), should be applied in the concrete instance; namely, which of the two Codes is more lenient with respect to the crime of murder for which the accused Artukovic is indicted.

The Criminal Code of January 27, 1929, in its Article 167, Para. 2, with reference to Art. 34, Para. 1, provided death penalty or penal servitude for life for the crime committed. In the event of the existence of extenuating circumstances, the least punishment that could have been pronounced under the mentioned Code pursuant to Article 71, Points 1 and 2, for each crime of murder (instigation to murder) was seven years penal servitude and that punishment could then be raised pursuant to the provisions under Article 62 of the former Criminal Code on the concurrence of crimes.

Under the new Criminal Code of February 27, 1951, now in force, provision is made that the crime of murder of several persons, viz. the instigation to murder of several persons, is one single crime under Article 135, Para. 2, (with reference to Article 19, Para. 1). Punishment with death or penal servitude lasting from 10-20 years is provided under the Law for this crime. In the event of the existence of extenuating circumstances, punishment may be reduced to one year imprisonment pursuant to Article 43, Point 1, of the new Criminal Code. Besides this, pursuant to the new Criminal Code

the raising of the punishment under the provisions regarding the concurrence of several crimes (Article 46) is not applicable, for all offenses foreseen as such by the Criminal Code constitute one single crime in a legal respect.

Therefore, the new Criminal Code of February 27, 1951, is, undoubtedly, more lenient towards the perpetrator and hence the crimes should be legally qualified under the new Criminal Code in accordance with Article 2 of the former Criminal Code and Article 90, Para. 2 of the new Criminal Code (with reference also to Article 9 of the Introductory Law to the new Criminal Code).

The crimes committed by the accused Artukovic simultaneously constitute great international crimes foreseen by International Law, specifically Law No. X of the Control Council for Germany and by Article 6 of the Statute of the International Military Tribunal. The crimes committed during the war and occupation by the accused Artukovic constitute the gravest violations of existing international conventions concluded by the United Nations for the purpose of combatting such crimes. The international legal protection of humanity also, therefore, demands the punishment of such a major criminal; it is in the spirit of humaneness and of democratic principles generally.

The County Public Prosecutor:

[Seal] /s/ MATE ZANINOVIC.

Certificate to be Attached to Documentary Evidence Accompanying Requisitions in the United States for Extradiction

American Foreign Service

Belgrade, Yugoslavia, September 20, 1951.

I, George V. Allen, Ambassador of the United States of America at Belgrade, Yugoslavia hereby certify that the annexed papers, being Indictment of Public Prosecutor against Andrija Artukovic proposed to be used upon an application for the extradiction from the United States of Andrija Artukovic charged with the crime of murder, alleged to have been committed in Yugoslavia, are properly and legally authenticated so as to entitle them to be received in evidence for similar purposes by the tribunals of the Federal People's Republic of Yugoslavia, as required by the Act of Congress of August 3, 1882.

It witness whereof I hereunto sign my name and cause my seal of office to be affixed this 20th day of September, 1951.

[Seal] /s/ GEORGE V. ALLEN,
Ambassador of the
United States of America.

Service No. 642
No fee prescribed
Item No. 30.

Translated from Serbo-Croat

Ministry of Justice of the Federal People's Republic of Yugoslavia

No. 4305/51

September 15, 1951, Beograd.

The Ministry of Justice of the F.P.R. of Yugoslavia herewith certifies the authenticity of the seal and signature of the County Public Prosecutor at Zagreb, on the Act of Indictment of the County Public Prosecutor's Office in Zagreb, No. K. 86/51 of September 4, 1951, including the addition to page 29.

The Director:

[Seal] /s/ NIKOLA SRZENTIC.

EXHIBIT B

Translated from Serbo-Croat.

County Court at Zagreb

Broj: K 215/1951-3

DECISION

The County Court at Zagreb, in Council consisting of the President of the Council, Slavko Miletic, Judge at the County Court at Zagreb, and of the Jurors Antun Bohatka and Josip Komatnik, and with the participation of the Registrar Ante Vukorep, having considered the Accusation made by

the County Public Prosecutor at Zagreb, Mate Zaninovic, dated and filed September 4, 1951, wherein Andrija Artukovic is accused of the crime of murder, and having considered the records of evidence of witnesses attached to the Accusation as well as other documents submitted to the Court, from which it appears that there are reasonable grounds for a founded belief that the accused Andrija Artukovic committed the crimes of which he is accused,

It Is Ordered pursuant to law, that the said Andrija Artukovic be apprehended and arrested and brought before this Court to answer for the crimes enumerated in the above-mentioned accusation, and to be dealt with according to law.

County Court at Zagreb.

Zagreb, on the 6th day of September, 1951.

The President of the Council:

[Seal] /s/ SLAVKO MILETIC.

The Registrar:

/s/ ANTE VUKOREP.

The Ministry of Justice of the F.P.R. of Yugoslavia herewith certifies the authenticity of the seal and signatures of the President of the Council and the Registrar of the County Court at Zagreb.

The Director:

[Seal] /s/ N. SRZENTIC.

No. 4305/51
September 13, Beograd.

Certificate to be Attached to Documentary Evidence Accompanying Requisitions in the United States for Extradiction

American Foreign Service

Belgrade, Yugoslavia, September 20, 1951.

I, George V. Allen, Ambassador of the United States of America at Belgrade, Yugoslavia, hereby certify that the annexed papers, being Decision of the County Court of Zagreb that Andrija Artukovic be arrested proposed to be used upon an application for the extradiction from the United States of Andrija Artukovic, charged with the crime of murder, alleged to have been committed in Yugoslavia, are properly and legally authenticated so as to entitle them to be received in evidence for similar purposes by the tribunals of the Federal People's Republic of Yugoslavia, as required by the Act of Congress of August 3, 1882.

In witness whereof I hereunto sign my name and cause my seal of office to be affixed this 20th day of September, 1951.

[Seal] /s/ GEORGE V. ALLEN,
Ambassador of the
United States of America.

Service No. 641
No fee prescribed
Item No. 30.

Received in evidence October 22, 1951.

United States Court of Appeals
for the Ninth Circuit

No. 13552

RAFO IVANCEVIC, Consul General of the Federal People's Republic of Yugoslavia,

Appellant,

vs.

ANDRIJA ARTUKOVIC,

Appellee,

JAMES J. BOYLE, United States Marshal,

Appellant,

vs.

ANDRIJA ARTUKOVIC,

Appellee.

STIPULATION FOR SUBSTITUTION OF PARTY APPELLANT

It Is Hereby Stipulated by and between counsel for the respective parties to the above-captioned proceedings, as follows:

1. The Federal People's Republic of Yugoslavia seeks extradition of the Appellee, Andrija Artukovic, under the terms of an extradition treaty proclaimed between the United States of America and the Kingdom of Serbia in 1902. It is the contention of Appellants that said treaty is presently in full force and effect between the United States of America and the Federal People's Republic of

Yugoslavia. Appellee contends that said treaty is not presently effective. This appeal arises from a Habeas Corpus proceeding commenced in the United States District Court for the Southern District of California against James J. Boyle, United States Marshal for said District, who, in such official capacity, had custody of Appellee. The United States Marshal is a necessary and proper party to these proceedings.

2. The Appellant James J. Boyle was succeeded in the office of the United States Marshal for the Southern District of California on May 1, 1953, by Robert W. Ware who is presently serving in such capacity.

3. There is a substantial need for the continuance of these proceedings in order to obtain a decision from the Court of Appeals upon the questions presented upon this appeal, the principal question being whether or not the treaty of Extradition hereinabove mentioned is presently in force and effect as a basis for the extradition of appellee.

4. That Robert W. Ware, United States Marshal may be substituted in place and stead of James J. Boyle, United States Marshal, as Appellant in the above captioned proceedings and as Respondent in the proceedings before the United States District Court.

Dated: September 4th, 1953.

/s/ RONALD WALKER,
Attorney for Appellants.

ROBERT T. REYNOLDS,
VINCENT G. ARNERICH,
EDWARD J. O'CONNOR,

By /s/ EDWARD J. O'CONNOR,
Attorneys for Appellee.

ORDER FOR SUBSTITUTION OF ROBERT W. WARE, UNITED STATES MARSHAL IN PLACE AND STEAD OF JAMES J. BOYLE, UNITED STATES MARSHAL AS PARTY APPELLANT

It appearing to the satisfaction of the Court from the stipulation of the parties to the above-captioned proceedings appended hereto that there is a substantial need for continuing and maintaining the above-entitled cause and obtaining an adjudication of the questions involved therein, and that James J. Boyle, United States Marshal, appellant herein, was succeeded in office on May 1, 1953 by Robert W. Ware, United States Marshal for the Southern District of California:

It Is Hereby Ordered that Robert W. Ware, United States Marshal be and he hereby is substituted as party Appellant in the above-entitled proceedings in place and stead of James J. Boyle, United States Marshal without prejudice to any proceedings already had in the said action or appeal.

Dated: September 16, 1953.

/s/ WILLIAM DENMAN

/s/ WILLIAM HEALY

/s/ HOMER BONE.

I hereby consent to the foregoing substitution.

/s/ R. W. WARE,
United States Marshal.

[Endorsed]: Filed September 17, 1953.

In the United States District Court, Southern District of California, Central Division

No. 13467-PH

ANDRIJA ARTUKOVIC,

Petitioner,

vs.

ROBERT W. WARE, United States Marshal, et al.,

Respondents.

ORDER

It Is Hereby Stipulated By and between counsel for the respective parties hereto that Branko Karadzole, the successor to Rafo Ivancevic as Consul General of the Federal People's Republic of Yugoslavia, at San Francisco, California, in the United States of America, may be substituted in place and stead of said Rafo Ivancevic as such Con-

sul General, as one of the respondents in the above-entitled proceeding.

Dated: November 16th, 1954.

/s/ RONALD WALKER,
Attorney for Respondents.

O'CONNOR & O'CONNOR
VINCENT G. ARNERICH
ROBERT T. REYNOLDS

By /s/ EDWARD J. O'CONNOR,
Attorneys for Petitioner.

It Is So Ordered: November 16th, 1954.

/s/ PEIRSON M. HALL,
United States District Judge.

[Endorsed]: Filed November 16, 1954.

[Title of District Court and Cause.]

MINUTES OF THE COURT
DECEMBER 1, 1954

Present: Hon. Peirson M. Hall, District Judge.

Counsel for Plaintiff: No appearance.

Counsel for Defendant: Ronald Walker for def't Yugoslavia.

Proceedings:

On motion of Attorney Ronald Walker It Is Ordered that Mandate be filed and spread on records

of this Court, and cause is set for hearing, pursuant to provisions of Mandate, on Dec. 13, 1954, 10 a.m.

EDMUND L. SMITH,
Clerk.

United States Court of Appeals
for the Ninth Circuit

No. 13552

RAFO IVANCEVIC, Counsel General of the Federal People's Republic of Yugoslavia,

vs.

ANDRIJA ARTUKOVIC, Etc.

MANDATE

United States of America—ss.

The President of the United States of America

To the Honorable, the Judges of the United States District Court for the Southern District of California, Central Division.

Greeting:

Whereas, lately in the United States District Court for the Southern District of California, Central Division, before you or some of you, in a cause between Andrija Artukovic, Petitioner, and James J. Boyle, United States Marshal, Respondent, No. 13467, an Order was duly entered on the 31st day of

July, 1952; which said Order is of record and fully set out in said cause in the office of the Clerk of the said District Court, to which record reference is hereby made and the same is hereby expressly made a part hereof.

And Whereas, the said Rafo Ivancevic, Consul General of the Federal People's Republic of Yugoslavia, and Robert W. Ware, United States Marshal, appealed to this court as by the inspection of the transcript of the record of the said District Court, which was brought into the United States Court of Appeals for the Ninth Circuit by virtue of an appeal agreeably to the Act of Congress, in such cases made and provided, fully and at large appears.

And Whereas, on the 1st day of October, in the year of our Lord, one thousand nine hundred and fifty-three, the said cause came on to be heard before the said United States Court of Appeals for the Ninth Circuit, on the said transcript of record, and was duly submitted:

On Consideration Whereof, It is now here ordered and adjudged by this Court that the Judgment of the said District Court in this cause be, and hereby is reversed and the proceedings are remanded to the district court with instructions to find that the extradiction treaty executed by and between the United States and Serbia in 1902 is a present, valid and effective treaty between the United States and the Federal People's Republic of

Yugoslavia, and has been a valid and effective treaty continuously since its execution between the United States and Serbia and through the changes in official title of the latter state to its present title of Federal People's Republic of Yugoslavia. Upon remand the district court will consider and adjudicate the issues raised by the pleadings, with costs in favor of the appellant Ivancevic and against appellee.

It Is Further Ordered and adjudged by this court that the appellant Ivancevic recover against appellee for his costs herein expended, and have execution therefor. (February 19, 1954.)

You, Therefore, Are Hereby Commanded that such proceedings be had in said cause, in conformity with the opinion and judgment of this court, as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness the Honorable Earl Warren, Chief Justice of the United States, the twenty-second day of March in the year of our Lord one thousand nine hundred and fifty-four.

/s/ PAUL P. O'BRIEN,
Clerk, United States Court of Appeals for the Ninth Circuit.

Costs

Cert. of transcript, Clerk of Dist. Ct.	$ 6.00
Printing record	914.33
Docket fee, Ct of Appeals	25.00
Total	$945.33

[Endorsed]: Filed December 1, 1954.

Judgment docketed and entered December 2, 1954.

[Title of District Court and Cause.]

MINUTES OF THE COURT
DECEMBER 13, 1954

Present: Hon. Peirson M. Hall, District Judge.

Counsel for plaintiff: Vincent Arnerich.

Counsel for defendant: Ronald Walker.

Proceedings:

For proceedings pursuant to Mandate filed and spread Dec. 1, 1954.

It is ordered that plaintiff file opening brief in 60 days, defendant file answering brief 30 days thereafter, and plaintiff file reply 15 days after filing of defendant's answering brief; the cause then to be set for oral argument.

EDMUND L. SMITH,
Clerk.

In the United States District Court for the Southern District of California, Central Division
No. 13467-PH

ANDRIJA ARTUKOVIC,

Petitioner,

vs.

ROBERT W. WARE, United States Marshal,

Respondent.

ORDER FIXING BOND

The above matter coming on regularly for hearing in connection with the disposition of matters raised by the amended petition for Writ of Habeas Corpus and the Court being fully advised in the premises and the matter of bond having been suggested by counsel, Now, Therefore, the Court makes the following order:

It Is Hereby Ordered, Adjudged And Decreed that Andrija Artukovic be at liberty and that bond in the amount of $5,000.00 be posted to assure his appearance at all times as ordered by Court.

It Is Further Ordered, Adjudged And Decree that the appeal bond heretofore posted in the sum of $5,000.00 is exonerated upon the filing and entry of this formal judgment and the posting of a new bond in the sum of $5,000.00 as above ordered.

It Is Further Ordered, Adjudged And Decreed that Andrija Artukovic respond to all further orders of the Court and in the event of his default bail will be forfeited and he remanded to the custody of the United States Marshal.

Dated: December 16, 1954.

/s/ PEIRSON M. HALL,
Judge.

[Endorsed]: Filed December 20, 1954.

Judgment docketed and entered December 20, 1954.

United States District Court, Southern District of California, Central Division
No. 13467—PH

ANDRIJA ARTUKOVIC,

Petitioner,

vs.

JAMES J. PYLE, United States Marshal,

Respondent.

ORDER FOR ISSUANCE OF WRIT OF HABEAS CORPUS

The holding of this court—107 F. Supp. 11—that no treaty was in existence between the United States of America and the country now known as Yugoslavia, was reversed by the United States Court of Appeals for the Ninth Circuit—211 F. 2d 565, Certiorari denied 348 U.S. 818.

Article VI of the Treaty, in its pertinent portion, provides as follows:

> "A fugitive criminal shall not be surrendered if the offense in respect of which his surrender is demanded be of a political character, or if he proves that the requisition for his surrender has, in fact, been made with a view to try or

punish him for an offense of a political character."

The matter is before the court on a Petition for Writ of Habeas Corpus prior to any hearing by a Committing magistrate. The function of the court at this time on this hearing is not that of a Committing magistrate, (Wright v. Henkel, 190 U.S. 40), and its power on a writ prior to such a hearing is confined to the limited and narrow question as to whether or not the Complaint states an extraditable offense under the treaty. Hence, this court cannot at this time consider that section of the treaty which provides that one shall not be surrendered "if he proves that the requisition for his surrender has, in fact, been made with a view to try or punish him for an offense of a political character." If the defendant can make such proof, the time and place to make it is at the hearing before the Committing magistrate. This court may now only consider whether or not the facts set forth on the face of the Complaint, together with the facts of which the court may take judicial notice (Jones v. United States, (1890) 137 U.S. 202, at 214), make the offense in respect of which the surrender of petitioner is demanded one "of a political character."

The text of the Complaint differs from the Indictment, but it has attached to it a copy of the Indictment as it was filed in the demanding country. The text of the Indictment made in the demanding country controls over the text of the Complaint wherein there is any difference. And the whole Indictment

must be read to determine whether or not within its four corners the conduct complained of was "of a political character."

The Indictment charges that the petitioner was "Minister of the Interior" from April 16, 1941, to October 10, 1942, in the cabinet of a government called "Pavelic" government. Many references are made to the fact that during the entire period involved in the Indictment, the petitioner occupied such position in such government. The court takes judicial notice of the fact that prior to, or at, or about, the time of the invasion of Yugoslavia by the German armies in early April, 1941, the head of the government of Yugoslavia, and all of the principle officials of that government, fled the country; and that on April 10, 1941, the portion of Yugoslavia known as "Croatia" established an independent government with a full set of officers, and sought recognition by other governments (and secured recognition by some governments), in which the petitioner became an official and was Minister of the Interior of that government during all of the period of time covered by the Indictment.

It appears from the face of the Indictment that all of the asserted offenses for which extradition is sought were the result of "orders" issued by the petitioner, acting as such official of the above-mentioned government during the time of war.

The Indictment is in vehement language, and it and the briefs of the parties reflect the animus which has existed between the Croatians and the

Serbs for many hundreds of years, as well as the deep religious cleavage known to exist among the peoples in the Balkans.

The Court has not counted the number of persons named, but notes that according to the parties, the Complaint names 1,293 persons as having been killed on "orders" of the petitioner.

But the Indictment does not stop at that. In Paragraph 7 on page 9, it is alleged that 30,000 unidentified persons were killed on "orders" of the petitioner. And further, in Paragraph 7 on page 14, approximately 3,000 more unidentified persons are alleged to have been killed on "orders" of the petitioner. In Paragraph 8 on page 15, it is alleged that as a result of "orders" of the petitioner, 200,000 persons were killed. On page 17, it is alleged that a total of 17,600 unidentified children were killed on "orders" of the petitioner.

It would be a work of supererogation to analyze the Indictment further. Though the Indictment is not bad because it charges the death of more than one person, the plain reading of the Indictment here makes it immediately apparent that the offenses for which the surrender of the petitioner is sought, were offenses of a political character. (In re Ezeta, 62 Fed. 972, and cases there cited.) See also: Hackworth—Digest of International Law, Vol. IV, 1952 Ed., page 4[illegible] et seq., Section 316, and cases there collected, which show that officials of the United States, Mexico and many other countries on

similar accusations, have uniformally held that conduct, such as that with which petitioner is charged in the Indictment here, was conduct of a political character and not extraditable under a treaty in terms such as the one before the court.

The petitioner is clearly entitled to the Writ of Habeas Corpus, and it is hereby ordered that such Writ of Habeas Corpus issue, and that thereupon petitioner be discharged and his bail exonerated.

Dated: Los Angeles, California, this 3rd day of April, 1956.

/s/ PEIRSON M. HALL,
United States District Judge.

[Endorsed]: Filed April 3, 1956.

Docketed and entered April 4, 1956.

[Title of District Court and Cause.]

MINUTES OF THE COURT
MAY 28, 1956

Present: Hon. Peirson M. Hall, District Judge:

Counsel for Plaintiff: No appearance.

Counsel for Defendant: Yugoslavia: Ronald Walker.

Proceedings:

On ex parte motion of Attorney Walker, counsel for defendant Yugoslavia, It Is Ordered that upon

issuance of Writ of Habeas Corpus, exoneration of bond of plaintiff is stayed for ten days.

JOHN L. CHILDRESS,
Clerk.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that Respondents Robert W. Ware, United States Marshal, and Branko Karadzole, Consul General of the Federal People's Republic of Yugoslavia, do hereby appeal to the United States Court of Appeals for the Ninth Circuit from the Order For Issuance Of Writ Of Habeas Corpus, for discharge of petitioner and exoneration of bail entered in this action on April 4, 1956.

/s/ RONALD WALKER,
Attorney for Respondents.

[Endorsed]: Filed June 1, 1956.

[Title of District Court and Cause.]

STIPULATION AND ORDER EXTENDING TIME TO DOCKET APPEAL

For the reason that the Clerk of this Court requires additional time for the preparation and certification of the record on appeal, it is hereby stipulated by and between counsel for the respective par-

ties, that the Respondents may have to and including the 30th day of July, 1956 for filing the record on appeal and docketing the appeal from the order of this Court entered on April 4, 1956 for Issuance of Writ of Habeas Corpus from which said Order Notice of Appeal was filed on June 1, 1956.

Dated: June 14th, 1956.

EDWARD J. O'CONNOR,
VINCENT G. ARNERICH,
ROBERT T. REYNOLDS,

By /s/ EDWARD J. O'CONNOR,
Attorneys for Petitioner.

/s/ RONALD WALKER,
Attorney for Respondents.

It Is So Ordered, this 18th day of June, 1956.

/s/ PEIRSON M. HALL,
United States District Judge.

[Endorsed]: Filed June 20, 1956.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, John A. Childress, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered 1 to 375, inclusive, contain the original

Petition for Writ of Habeas Corpus;

Order to Show Cause Why Writ of Habeas Corpus should not issue;

Return to Order to Show Cause;

Petitioner's Supplemental Memorandum of Points & Authorities;

Appearance of Consul General of Federal People's Republic of Yugoslavia;

Amended Petition for Writ of Habeas Corpus;

Supplemental Points and Authorities for Release from Custody;

Stipulation for Cash Bond;

Notice of Entry of Order Directing that Plaintiff be released upon Posting bond in amount of $50,000.00;

Petitioner's Brief in Support of Amended Petition for Writ of Habeas Corpus;

Brief of Respondent on Validity of Extradition Treaty;

Petitioner's Reply Brief;

Memorandum of Authorities in Opposition to Amended Petition;

Reply Brief for Demanding Government;

Respondent's Supplemental Authorities re Validity of Extradition Treaty;

Petitioner's Supplemental Points and Authorities re Existence of Extradition Treaty;

Defendant's Contentions for Unconditional Release from Custody;

Supplemental Memorandum of Authorities filed on behalf of Demanding Govt.;

Additional Points and Authorities & Supplemental Brief;

Respondent's Supplementary Memorandum regarding Information requested by the Court;

Petitioner's Reply to Demanding Government's Second Supplemental Memorandum of Authorities;

Second Supplemental Memorandum of Authorities filed on behalf of Demanding Government;

Third Supplemental Memorandum of Demanding Government;

Stipulation for Cash Bond;

Order re Substitution of bond;

Memorandum;

Order Granting Petition for Writ of Habeas Corpus, Release of Petitioner and Release on Bail Pending Appeal;

Notice of Appeal filed August 13, 1952;

Statement of Points on Appeal filed September 4, 1952;

Designation of Contents of Record on Appeal; filed September 4, 1952;

Substitution of Attorney;

Statement of Points on Appeal;

Designation of Contents of Record on Appeal filed October 28, 1952;

Order for Substitution of Consul General;

Mandate of the Court of Appeals for the Ninth Circuit Spread on Dec. 1, 1954;

Order Fixing Bond;

Petitioner's Brief;

Respondent's Brief;

Petitioner's Reply Brief with Supplemental Brief Attached;

Respondent's Supplemental Brief;

Order for Issuance of Writ of Habeas Corpus;

Findings of Fact & Conclusions of Law & Judgment Lodged April 16, 1956;

Objections to Proposed Findings of Fact & Conclusions of Law;

Notice of Appeal; filed June 1, 1956;

Designation of Record on Appeal;

Stipulation and Order Extending Time to Docket Appeal;

which, together with a full, true and correct copy of the Minutes of the Court for September 17, 1951, September 19, 1951, October 8, 1951, October 22, 1951, November 5, 1951, January 14, 1952, February 18, 1952, April 7, 1952, May 12, 1952, June 9, 1952, July 14, 1952, December 1, 1954, December 13, 1954, and May 28, 1956; 3 volumes of reporter's transcript of proceedings; Demanding Government's Exhibits DG-A thru DG-H, inclusive, and Petitioner's exhibits 1 thru 15, inclusive, except exhibit 8 and including 15A, all in the above-entitled cause, constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth circuit in the above-entitled case.

I further certify that my fees for preparing the foregoing record amount to $2.00, which sum has been paid by appellant.

Witness my hand and seal of the said District Court this 25th day of July, 1956.

[Seal] JOHN A. CHILDRESS,
Clerk.

/s/ CHARLES E. JONES,
Deputy.

[Endorsed]: No. 15217. United States Court of Appeals for the Ninth Circuit. Branko Karadzole, Consul General of the Federal People's Republic of Yugoslavia and Robert W. Ware, United States Marshal, Appellants, vs. Andrija Artukovic, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed July 28, 1956.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

United States Court of Appeals
for the Ninth Circuit

No. 15217

JAMES J. BOYLE, United States Marshal and RAFO IVANCEVIC, Consul General of the Federal People's Republic of Yugoslavia,

Appellants,

vs.

ANDRIJA ARTUKOVIC,

Appellee.

STATEMENT OF POINTS OF APPEAL

Robert O. Ware, United States Marshal, and Branko Karadzole, Consul General of the Federal People's Republic of Yugoslavia (substituted as parties to this proceeding as successors in their respective capacities to James J. Boyle and Rafo Ivancevic, named in the caption hereto), appellants herein present herewith the following Statement of Points on Appeal:

I.

The District Court erred in holding that the facts set forth on the face of the Amended Complaint in Extradition show the offenses with which Appellee is charged to be of a political character and hence not extraditable under the Treaty.

II.

The District Court erred in holding that the facts set forth on the face of the Amended Complaint in

Extradition together with the facts of which the Court could take judicial notice show the offenses with which Appellee is charged to be of a political character and hence not extraditable under the Treaty.

III.

The District Court erred in its ruling that the accused Appellee is entitled to offer proof before the Commiting Magistrate that the requisition for his surrender has, in fact, been made with a view to try or punish him for an offense of a political character.

/s/ RONALD WALKER,
Attorney for Appellants.

Receipt of copy acknowledged.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 462

BRANKO KARADZOLE, Consul General of the Federal People's Republic of Yugoslavia, and

ROBERT W. WARE, United States Marshal, *Petitioners*,

v.

ANDRIJA ARTUKOVIC

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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INDEX

	Page
Opinions Below	1, 2
Jurisdiction	2
Questions Presented	2
Treaty and Statutory Provisions Involved	5
Statement of the Case	5
Reasons for Granting the Writ	
1. In holding that resolutions of international bodies, concurred in by the United States and having pertinency to the construction and application in particular circumstances of a treaty provision common to most, if not all, treaties of a class to which nations generally, including the United States, are parties, are not to be considered in construing and applying such a treaty provision in such circumstances, the Court below has decided an important question of federal law which has not been, but should be, settled by this Court	20
2. The international acts to which the United States was thus a party necessarily imply an Executive construction of treaty provisions such as are here under consideration, and in failing to give them any consideration in the construction of such provisions the Court below decided a federal question in a way in conflict with applicable decisions of this Court. Contrary to the opinion of the Court below, there are no "long standing judicial interpretations of similar treaty provisions" in conflict with what was necessarily the Executive interpretation	35
3. Wholly apart from any construction by nations generally, including the United States, and any Executive construction, the Court below decided a	

Page

federal question in a way in conflict with applicable decisions of this Court in holding that it appeared from the face of the indictment, and the attachment thereto, taken together with the facts of which judicial notice was taken, that only "offenses of a political character" were charged in the indictment 47

In Conclusion 56

Appendix A 1a

Appendix B 4a

Appendix C 17a

Appendix D 18a

CITATIONS

CASES:

Bernstein v. *N. V. Nederlandsche-Amerikaansche Stoomvaart-Maatschappij*, 173 F. (2d) 71 (2d Cir. 1949), mandate amended after Executive consent, 210 F. (2d) 375 (2d Cir. 1954) 52
Bernstein v. *Van Heyghen Freres*, 163 F. (2d) 246 (2d Cir. 1947), cert. denied, 332 U.S. 772 52
Castioni, In re, [1891] 1 Q.B. 149 .....40, 41, 49, 50, 54
Charlton v. *Kelly*, 229 U.S. 447 (1913) 35, 38
Chicago and Southern Air Lines v. *Waterman Steamship Corp.*, 333 U.S. 103 (1948) 36
Clark v. *Allen*, 331 U.S. 503 (1947) 39
Dainese v. *Hale*, 91 U.S. 13 (1875) 35
Ezeta, In re, 62 Fed. 972 (N.D. Cal. 1894) 6, 40, 41, 44, 52
Factor v. *Laubenheimer*, 290 U.S. 276 (1933) 35, 58
Ivancevic v. *Artukovic*, 211 F. (2d) 565 (9th Cir. 1954), cert. denied 348 U.S. 818, rehearing denied 348 U.S. 889 .....5, 56
Kolczynski, Ex parte, [1955] 1 Q.B. 540 .....40, 43, 44

Page

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Lincoln, In re, 228 Fed. 70 (E.D.N.Y. 1915), aff'd 241 U.S. 651 ..... 6, 44
Luis Oteiza y Cortes v. *Jacobus*, 136 U.S. 330 (1890) 40, 42
Maret, The, 145 F. (2d) 431 (3rd Cir. 1944) 52
Meunier, In re, [1894] 2 Q.B. 415 ..... 53, 54, 55
Ornelas v. *Ruiz*, 161 U.S. 502 (1896) 40, 41, 42, 47, 48, 49, 53
Oyama v. *California*, 332 U.S. 633 (1948) 35
Pigeon River Improvement, Slide & Boom Company v. *Charles W. Cox, Ltd.*, 291 U.S. 138 (1934) 39
Sullivan v. *Kidd*, 254 U.S. 433 (1921) 35
Terlinden v. *Ames*, 184 U.S. 270 (1902) 58
U.S. ex rel. Giletti v. *Commissioner*, 35 F. (2d) 687 (2d Cir. 1929) 40, 42, 43
United States v. *Reid*, 73 F. (2d) 153 (9th Cir. 1934), cert. denied 299 U.S. 544 ..... 35, 36
Valentine v. *U.S. ex rel. Neidecker*, 299 U.S. 5 (1936) 58
Yamashita, Matter of, 327 U.S. 1 (1946) 7

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Displaced Persons Act of 1948, 60 Stat. 1009, Tit. 50 App. U.S.C. Sec. 1951 *et seq.* 6
Tit. 18 U.S.C. Sec. 3184 ..... 5, 36, 37, 57, 19a-20a
Tit. 22 U.S.C. Sec. 287 ..... 14, 34
Tit. 28 U.S.C.
Sec. 1254(1) 2
Sec. 2241 ..... 5, 20a
Sec. 2243 ..... 5, 20a, 21a
United Nations Participation Act, 59 Stat. 619, as amended, Tit. 22 U.S.C. Sec. 287 *et seq.* 34

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Extradition Treaty of 1887 between the United States and Russia, II Malloy, *Treaties, Conventions, etc.*, 1527 19

Page

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pp. 107-110 22
p. 113 53
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Page

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Page

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Page

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No.

BRANKO KARADZOLE, Consul General of the Federal People's Republic of Yugoslavia, and

ROBERT W. WARE, United States Marshal, *Petitioners*,

v.

ANDRIJA ARTUKOVIC

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

The petitioners, Branko Karadzole, Consul General of the Federal People's Republic of Yugoslavia, and Robert W. Ware, United States Marshal, appellants below, pray that a writ of *certiorari* issue to review the judgment of the United States Court of Appeals for the Ninth Circuit in the above entitled case.

OPINIONS BELOW

The opinion of the United States District Court for the Southern District of California, Central Division (App. A, pp. 1a-4a, *infra*), is reported at 140 F.

Supp. 245. The opinion of the Court of Appeals for the Ninth Circuit (App. B, pp. 4a-17a, *infra*) is not yet reported.

JURISDICTION

The judgment of the Court of Appeals for the Ninth Circuit, affirming the judgment of the United States District Court for the Southern District of California, Central Division, is dated June 24, 1957, and was filed and entered that day (App. C, p. 17a, *infra*). The jurisdiction of this Court is invoked under Tit. 28 U.S.C. Sec. 1254(1).

QUESTIONS PRESENTED

1. Whether in the construction and application in particular circumstances of a treaty provision common to most, if not all, treaties of a class of treaties to which nations generally are parties, there should be taken into account international acts in which the United States participated, such as resolutions of the General Assembly of the United Nations, which evidence and are premised upon a general understanding among nations as to the construction and application of such provision in such circumstances.

2. Whether the adoption of resolutions by international bodies, such as the General Assembly of the United Nations, with the concurrence of the United States, calling upon member nations and non-member nations alike upon demand and the making of a *prima facie* case, to surrender for trial persons charged with the commission of war crimes, as defined by international agreement to which the United States is a party, to the countries where such crimes were com-

mitted, is to be taken as evidencing and being premised upon a general understanding among nations, including the United States, that such war crimes are not political offenses for which extradition cannot be had under clauses common to most, if not all, extradition treaties to which nations generally are parties.

3. Whether in the construction and application in particular circumstances of a treaty provision common to most, if not all, treaties of a class of treaties to which the United States is, and has been a party, there should be taken into account as an Executive construction thereof, the affirmative measures taken by the United States to bring about an international act, such as the adoption of a resolution by the General Assembly of the United Nations, which evidences and is premised upon an understanding of the Executive as to the construction and application of such provision in such circumstances.

4. Whether the taking of affirmative measures by the United States to bring about the adoption by international bodies of which it is a member, such as the General Assembly of the United Nations, of resolutions calling upon member nations and non-member nations alike, upon demand and the making of a *prima facie* case, to surrender for trial persons charged with the commission of war crimes, as defined by international agreement to which the United States is a party, to the countries in which such crimes were committed, is to be taken as evidencing and being premised upon a construction by the Executive that such war crimes are not offenses of a "political character" for which extradition cannot be had under clauses common to most, if not all, extradition treaties to which the United States is, and has been a party.

5. Whether the indictment of the respondent for murder, duly returned by the County Public Prosecutor of Zagreb, Yugoslavia (R. 464-525) considered in conjunction with the Prosecutor's "Explanation" annexed thereto and facts of which judicial notice was taken, on its face necessarily and as a matter of law, alleges the commission only of offenses "of a political character", expressly excluded by Article VI of the Extradition Treaty of 1901 in force and effect between the United States and Yugoslavia (32 Stat. 1890; II Malloy, *Treaties, Conventions, etc.*, 1622-1625) from the crimes and offenses, including murder, for which extradition may be had under Article II of such Treaty.

6. Whether "that various factions representing different theories of government were struggling for power during this period in Croatia", of which the Courts below purported to take judicial notice, and that respondent was a leader of one such faction, necessarily and as a matter of law, renders the murders, and each of them, alleged in such indictment, offenses "of a political character" in the absence of anything appearing that the victims of such alleged murders, named and described in such indictment, were participants in such "struggle", or partisans of one side to it or another, or were in any way other than peaceful civilians as alleged in such indictment, and in the absence of anything appearing that such "struggle" was an armed struggle or that respondent's alleged victims met their deaths in consequence thereof.

TREATY AND STATUTORY PROVISIONS INVOLVED

The treaty provisions involved are Articles II and VI of the Extradition Treaty of 1901 concluded between the United States and Serbia, 32 Stat. 1890, and currently in force and effect between the United States and Yugoslavia. *Ivancevic* v. *Artukovic*, 211 F. (2d) 565 (9th Cir. 1954), cert. denied 348 U.S. 818, rehearing denied 348 U.S. 889. The statutory provisions involved are the Act of June 25, 1948, c. 645, 646, 62 Stat. 822, 964, 965, as amended May 24, 1949, c. 139, Sec. 112, 63 Stat. 105, the same being Tit. 18 U.S.C. Sec. 3184 and Tit. 28 U.S.C. Secs. 2241 and 2243. The pertinent texts of such treaty and statutory provisions are set forth in App. D, pp. 18a-21a, *infra*.

STATEMENT OF THE CASE

The controversy arises upon respondent's petition for a writ of *habeas corpus* discharging him from the custody of the United States Marshal into which he was taken under a warrant issued by a United States Commissioner pursuant to Tit. 18 U.S.C. Sec. 3184, following the filing of a complaint in extradition against him by the Consul General of Yugoslavia under Tit. 18 U.S.C. Sec. 3184 (R. 8, 13, 17, 18, 22, 92, 378).* The complaint in extradition (R. 405) has attached to it a copy of the indictment returned against the respondent in Yugoslavia (R. 463) including an "Explanation" thereof by the Yugoslav County Public Prosecutor which is annexed thereto (R. 503). The

* All "R." references are to the printed Record prepared for the use of the Court below, nine additional copies of which have been lodged with the Clerk of this Court in accordance with Rule 21(4). The complaint in extradition (actually the amended complaint), the Yugoslav indictment and the "Explanation" are set out in full in Volume II of such Record.

Court below affirmed the granting of the writ and the holding of the District Court that the complaint in extradition was insufficient to vest the Commissioner with jurisdiction on the ground that, considered in conjunction with the "Explanation" annexed thereto and certain facts of which judicial notice was taken, the Yugoslav indictment on its face alleged only offenses of a "political character" which are not extraditable under Article VI of the Treaty.[1] There has been no hearing on the complaint.

The respondent, a citizen of Yugoslavia, entered the United States on July 16, 1948, unlawfully on an Irish certificate of identity and an American temporary visitor's visa, both of which were issued to "Alois Anich" (R. 125, 126) which is not respondent's name. His petition for a readjustment of his status under the Displaced Persons Act of 1948 has been denied, and deportation proceedings are pending against him (R. 122, 123)..

The Yugoslav indictment charges the respondent with murder under the Yugoslav criminal code (R. 500). In the prosecutor's "Explanation" annexed to the indictment, it is said (R. 522):

> The crimes committed by the accused Artukovic simultaneously constitute great international

[1] Article VI of the Treaty, p. 19a, *infra*, has two aspects, denying extradition, first, "if the offense • • • [charged] be of a political character", and second, if the "fugitive • • • proves that the requisition for his surrender has, in fact, been made with a view to try or punish him for an offense of a political character". The decisions of the Courts below rest solely on the first of these provisions. It has, moreover, been held that whether extradition is barred by the second provision is a question to be determined exclusively by the Executive, and may not be considered by the Courts. *In re Lincoln*, 228 Fed. 70, 74 (E.D.N.Y. 1915), aff'd 241 U.S. 651; *In re Ezeta*, 62 Fed. 972 (N.D. Cal. 1894).

crimes foreseen by International Law, specifically Law No. X of the Control Council for Germany and by Article 6 of the Statute of the International Military Tribunal.

The indictment (R. 464-500) accuses the respondent specifically of the murder of some 1,293 men, women and children, including infants, whom it names and describes, and refers in general terms to in excess of 200,000 victims. It charges that (R. 464) the respondent:

> * * * in the course of 1941 and 1942, when Yugoslavia was occupied by German and Italian troops, issued orders based on criminal motives, hatred and the desire for power, to members of bands of which he was one of the leaders, to carry out mass mass [sic] slaughters of the peaceful civilian population of Croatia, Bosnia, and Herzegovina, especially women and children, which orders were executed in their entirety, and in this way of having consciously and deliberately ordered and caused the death of thousands of men, women and children—Serbs, Croats, Jewish people, Gypsies and other citizens of Yugoslavia * * *.[2]

From the prosecutor's "Explanation" attached to the indictment, it appears that during the period involved, April 16, 1941—October 10, 1942, the respond-

[2] The charges against respondent are in magnitude and in the quality of alleged victims, reminiscent of those in *Matter of Yamashita*, 327 U.S. 1, 14, 15 (1946) where the accusation involved a "deliberate plan and purpose to massacre and exterminate a large part of the civilian population of Batanagas Province * * * as a result of which more than 25,000 men, women and children, all unarmed non-combatant civilians, were brutally mistreated and killed * * *". But that is where the similarity ends, for while the charge here is that respondent affirmatively ordered the mass murders of which he stands accused, Yamashita's guilt was based upon his failure to restrain others.

ent was styled "minister of the interior" in the "cabinet" of one Ante Pavelic (R. 503, 512). It is a matter of history of which courts can properly take judicial notice, that Pavelic was the "poglavnick" or dictator of the so-called "independent state" in Croatia (an integral part of Yugoslavia) which the Germans and Italians purported to establish in the course of the late war during their occupation of Yugoslavia, with an Italian duke as its absentee "king".[3] The existence of this "independent state", so-called, was never recognized by the United States, nor indeed by any country other than its enemies, Germany, Italy, Japan, and their satellites. Lemkin, *Axis Rule in Occupied Europe* (Carnegie Endowment, 1944) 252.[4]

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[3] See, e.g., Count Galleazo Ciano, *The Ciano Diaries 1939-43* (Doubleday & Co., New York, 1946) 342, 344, 345, 348, 352, 354, 365; Admiral Franco Maugeri, *From the Ashes of Disgrace* (Reynal & Hitchcock, New York, 1948) 94; Joseph Goebbels, *The Goebbels' Diaries* (Doubleday & Co., New York, 1948) 51, 431, 432.

[4] When Yugoslavia was invaded by the Axis forces on April 6, 1941, Secretary of State Hull, in a statement to the press after consultation with the President, characterized the invasion as "barbaric". IV *Bull.*, Dept. of State, April 12, 1941, p. 448. The attitude of the United States with respect to the purported "independent state" in Croatia was reflected by the public statement of Under Secretary of State Welles that he wished "to reiterate the indignation of this Government and the American people at the invasion and mutilation of Yugoslavia by various member states of the Tripartite Pact". IV *Bull.*, Dept. of State, June 7, 1941, p. 683. The Yugoslav government-in-exile which had been promptly established upon the occupation of Yugoslavia by the Germans and Italians was fully recognized by the United States as the government of Yugoslavia and a mutual aid agreement was concluded with it on July 24, 1942. Dept. of State Pub. 1811. Supplies and services were mutually exchanged under such agreement, and in 1948 the present government of Yugoslavia and the United States settled all claims arising thereunder. Dept. of State Press Release 584, July 19, 1948.

The Court below held that by reason of the respondent's membership in the Pavelic "cabinet" at the time of the commission of the alleged murders (disclosed in the prosecutor's "Explanation" annexed to the indictment) and "the fact that various factions representing different theories of government were struggling for power during this period in Croatia" (the taking of judicial notice of which by the District Court the Court below expressly approved) "the offenses for which the surrender of Artukovic [i.e., the respondent herein] was sought were offenses of a political character * * *" (App. B, p. 14a, *infra*). But, the Yugoslav indictment describes the respondent's alleged victims as "peaceful civilian[s]" (R. 464), "peaceful citizens" (R. 465), and "completely innocent citizens" (R. 481), and there is nothing in the indictment, nor elsewhere in the record identifying them with any of the parties to the "struggle" of which the Courts below took judicial notice, or which indicates that such "struggle" was an armed "struggle", or which in any way relates the specific murders with which the respondent stands charged to such "struggle" or to any armed conflict in the course thereof.

The nature of the murders charged in the indictment is, however, clearly discernible. The indictment is divided into eight sections. The first section charges in simple language the murder of one Zimonjic, described as a Bishop of the Greek Orthodox Church (R. 465). The second, third and fourth sections charge the respondent with ordering the murders of "citizens of Serbian nationality" in three areas, naming and describing victims of both sexes and various ages (R. 465, 468, 469). The fifth and sixth sections charge the

respondent with ordering the murder of inhabitants of particular towns and name the victims, both men and women (R. 471). In the seventh section the respondent is accused of ordering the murder of "all citizens of gypsy origin" in three areas, and the victims, men, women and children, are named and described (R. 473). The eighth section appears to be a catchall, charging respondent with ordering the murder of "Croats, Serbs, Jews and other", and naming as among the victims some fifty-eight children ranging from sixteen days to fifteen years of age, a host of women from eighteen to eighty-five years of age whose names fill almost thirteen pages of the record, forty-seven priests of the Serbian Orthodox Church, and forty-eight Jewish rabbis and cantors (R. 481-500).

Such allegations support the statement of the Yugoslav prosecutor in his "Explanation" of the indictment (R. 522) that in addition to being murder under the Yugoslav criminal code, the crimes alleged in the indictment constitute crimes under "Article 6 of the Statute of the International Military Tribunal". This Statute or Charter, as it is elsewhere called, is an international agreement entered into on August 8, 1945, by the United States (acting through the late Mr. Justice Jackson), the United Kingdom (acting through Lord Chancellor Jowitt), France and the Soviet Union (U.N. Pub. Sales No. 1949, V. 7, pp. 89, 92, 93), and accepted by the General Assembly of the United Nations on February 13, 1946 (*U.N. Yearbook, 1946-47*, p. 66), Article 6 of which defines as war criminals those, among others, who committed:

> (c) CRIMES AGAINST HUMANITY: namely, murder, extermination, enslavement, deportation, and other inhumane acts com-

mitted against any civilian population, before or during the war; or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.

Leaders, organizers, instigators and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any persons in execution of such plan.

On February 13, 1946, the General Assembly of the United Nations unanimously adopted the following resolution (*U.N. Yearbook, 1946-47*, p. 66; *Verbatim Record*, U.N. General Assembly, Jan. 10—Feb. 14, 1946, pp. 469, 470, 663, 664):

The General Assembly:

Taking note of the Moscow Declaration of 1 November 1943 by President Roosevelt, Marshal Stalin and Prime Minister Churchill concerning enemy atrocities in the course of the war,[5] and of the declaration by certain Allied Governments of 13 January and 18 December 1942 concerning the same matter;

[5] The Moscow Declaration, also given as of date of October 30, 1943, was a warning to the German government and "those German officers and men and members of the Nazi party who have been responsible for • • • atrocities, massacres and executions" that they would "be sent back to the countries in which their abominable deeds were done" for trial, "without prejudice to the case of the major criminals, whose offences have no particular geographical localization and who will be punished by the joint decision of the Governments of the Allies". Dept. of State Pub. 2423, p. 3; U.N. Pub. Sales No. 1949. V. 7, pp. 87, 88. The definition of war criminals established by the Agreement of August 8, 1945, is not limited to Germans.

Taking note of the laws and usages of warfare established by the Fourth Hague Convention of 1907;

Taking note of the definition of war crimes and crimes against peace and against humanity contained in the Charter of the International Military Tribunal dated 8 August 1945;

Believing that certain war criminals continue to evade justice in the territories of certain States;

Recommends

That Members of the United Nations forthwith take all the necessary measures to cause the arrest of those war criminals who have been responsible for or have taken a consenting part in the above crimes, and to cause them to be sent back to the countries in which their abominable deeds were done, in order that they may be judged and punished according to the laws of those countries;

And calls upon

The Governments of States which are not Members of the United Nations also to take all necessary measures for the apprehension of such criminals in their respective territories with a view to their immediate removal to the countries in which the crimes were committed for the purpose of trial and punishment according to the laws of those countries.

This resolution, which originated from a Byelorussian proposal in committee, was drafted by a subcommittee composed of representatives of Luxembourg, Ecuador, the Netherlands, the United Kingdom, Byelorussia and the Ukraine, aided by their legal advisers, and was unanimously recommended by the committee for adoption by the General Assembly (*Verbatim Record, supra*, 663, 664; *Summary Records*, U.N. General Assembly First Committee, Jan. 11—Feb. 12, 1946, pp. 20-23).

On October 31, 1947, the General Assembly of the United Nations adopted a further resolution on the subject (*U.N.Yearbook, 1947-48,* p. 222):

The General Assembly,

Noting what has so far been done in the matter of the surrender and punishment, after due trial, of the war criminals referred to in its resolution adopted on 13 February 1946,

Reaffirms the aforementioned resolution;

Reaffirms also its resolutions on the subject of refugees adopted on 12 February 1946 and on 15 December 1946;

Recommends Members of the United Nations to continue with unabated energy to carry out their responsibilities as regards the surrender and trial of war criminals;

Recommends Members of the United Nations, which desire the surrender of alleged war criminals or traitors (that is to say nationals of any State accused of having violated their national law by treason or active collaboration with the enemy during the war) by other Members in whose jurisdiction they are believed to be, to request such surrender as soon as possible and to support their request with sufficient evidence to establish that a reasonable *prima facie* case exists as to identity and guilt, and

Reasserts that trials of war criminals and traitors, like all other trials, should be governed by the principles of justice, law and evidence.

The following comment with respect to the 1947 resolution appeared in the XVII *Bull.,* Dept. of State, Dec. 14, 1947, at page 1159:

> The General Assembly adopted a United Kingdom resolution, *introduced after discussions with the United States,* noting the accomplishments thus far in the surrender and punishment of war criminals; recommending that members continue to carry out their responsibilities in this regard; stating that members desiring the surrender of war criminals and traitors should request their surrender as soon as possible, with supporting evidence of guilt; and calling for fair trials. (Emphasis supplied.)

The origin and purpose of this resolution appear clearly from President Truman's discussion of it in the *Report by the President to the Congress for the Year 1947* with respect to the activities of the United Nations (Dept. of State Pub. 3024, pp. 80-81), made pursuant to the requirements of Tit. 22 U.S.C. Sec. 287b, in which it is said:

> In February 1946 the General Assembly adopted, on the proposal of Byelorussia, a resolution *regarding the extradition and punishment of war criminals.* In August 1947 Yugoslavia asked the Secretary-General of the United Nations to place on the agenda of the Second Session of the Assembly the question of the recommendations to be made *to insure the surrender of war criminals,* traitors, and quislings to the states where the crimes were committed. This item was referred to the Sixth Committee.
>
> The draft resolution proposed by Yugoslavia, if adopted, would have constituted a finding that certain Members of the United Nations were not carrying out the recommendations of the General Assembly resolution of February 1946. In open debate Yugoslavia made charges against the United States, the United Kingdom and, to a less degree, France, of failure to carry out their obli-

gations with respect to war criminals and quislings. A Soviet amendment was also accompanied by distortions and charges against the United States and the United Kingdom. These charges were emphatically denied by the Delegations of the United States and the United Kingdom. They recalled the steps taken by their Governments and declared their firm intention of prosecuting war criminals. At the same time they insisted that *mere allegations were not sufficient to justify extradition* and that identity and guilt of the persons sought should be adequately established by *prima facie* evidence.

The Assembly approved the report of the Sixth committee on war criminals, *which recommended for adoption a resolution introduced by the United Kingdom after collaboration with the United States.* The resolution notes what has been done thus far in the surrender and punishment of war criminals, recommends that *Members of the United Nations continue to carry out their responsibilities for the surrender of war criminals,* and states that Members desiring such surrender should request it as soon as possible and should support their requests with sufficient evidence to establish that a *prima facie* case exists as to identity and guilt. The requirement as to the *prima facie* evidence constitutes a great forward step. A provision in the resolution that trials of war criminals and traitors, like all other trials, should be governed by the principles of justice, law, and evidence constitutes another great step in upholding the rule of law. (Emphasis supplied.)

Prior to the agreement of August 8, 1945, defining "war criminals", and the adoption of the United Nations resolutions of February 13, 1946, and October 31, 1947, the United States, represented by Secretary of State Stettinius, joined on March 6, 1945, in the adop-

tion of Resolution VI of the Inter-American Conference on Problems of War and Peace, held at Mexico City, which provided (Pan American Union Cong. & Conf. Series No. 47, pp. 27, 28):

WHEREAS:

During the present world war the leaders, as well as numerous officials and military and civilian agents of the Axis powers and their satellites, have committed heinous crimes in violation of the laws of war, of existing treaties, of the rules of International Law, of the penal codes of civilized nations, and of the concepts of civilized life;

Individuals who have committed such crimes may have taken, or may seek, refuge in the territories of the American Republics;

Arrangements should be made to distinguish such criminals from ordinary political refugees,

The Inter-American Conference on Problems of War and Peace

DECLARES:

That the American Republics, faithful to the principles of humanity and law on which their civilization is founded, repudiate war crimes and adhere to the Declaration of October 1943 by Great Britain, the United States of America and the Soviet Union to the effect that persons guilty of, responsible for, and accomplices in the commission of such crimes, shall be tried and sentenced; and, therefore,

RESOLVES:

1. To recommend that the Governments of the American Republics do not give refuge to individuals guilty of, responsible for, or accomplices in, the commission of such crimes.

2. To recommend that the Governments of the American Republics, upon the demand of any of the United Nations and in accordance with the procedure set forth in the following paragraph, surrender individuals accused of such crimes to the United Nation making the request, or to the custody of the agency of the United Nations that may be established for the trial and punishment of such criminals.

3. To request that the Inter-American Juridical Committee, keeping in mind the respective national legislation on the subject, prepare and submit for adoption by the Governments of the American Republics, the standards needed for determining the status of war criminals, as well as the procedure to be followed for the return or delivery of such criminals.[6]

The Court below held (App. B, p. 16a, *infra*) that the foregoing international acts and engagements were without consequence in construing Article VI of the Treaty on the ground that they did "not [have] sufficient force of law to modify long standing judicial interpretations of similar treaty provisions". But the Court below cited no such "judicial interpretations", and it is commonplace that materials of many kinds, not having any force as law, are properly to be accorded weight in construing a treaty.

* * *

[6] No such standards or procedures were promulgated. Presumably it was concluded that the definition of "war criminal" subsequently adopted on August 8, 1945, by agreement between the United States, the United Kingdom, France and the Soviet Union, and approved by the United Nations, *supra*, pp. 10, 11 and the procedures prescribed by the February 13, 1946, and October 31, 1947, resolutions of the United Nations, *supra*, pp. 11-13, made unnecessary any special standards or procedures for the American republics.

The questions posed by this petition are of the gravest importance. They involve not only the construction and application of Article VI of the Treaty, the substance of which is common to most, if not all, of the extradition treaties to which the United States is or has been a party,[7] but also the credit attaching to solemn international acts of the United States. But perhaps of even deeper significance, is whether, notwithstanding the profoundly humanitarian concern which, since long prior to the negotiation of the Treaty here involved, the United States has traditionally and invariably shown for the fate of racial and national minorities subjected to exterminatory practices by their oppressors,[8] the extradition of one formally accused of the commission of such crimes will be refused on the ground that the offenses charged are of a "political character". The holding of the Court below

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[7] II Hyde, *International Law* (2d Rev. Ed., 1951) 1020.

[8] See, e.g., H. Res., January 30, 1882 (13 *Cong. Rec.* 645, 738, 47th Cong., 1st Sess.); H. Res., August 20, 1890 (21 *Cong. Rec.* 8882, 51st Cong., 1st Sess.); S. Res. 107, December 3, 1894 (27 *Cong Rec.* 12, 53rd Cong., 3rd Sess.); S. Res. December 4, 1895 (28 *Cong. Rec.* 36, 54th Cong., 1st Sess.); Chester A. Arthur, *Second Annual Message to the Congress*, December 4, 1882, VI *Messages and Papers of the Presidents* (1912 ed.) 4713, 4714; Benjamin Harrison, *Third Annual Message to the Congress*, December 9, 1891, VIII *id.* 5615, 5623; Grover Cleveland, *Fourth Annual Message to the Congress*, December 7, 1896, VIII *id.* 6146, 6147. See also (1872) *Foreign Relations of the United States* (Govt. Printing Office, 1873) 493-5, 497-503, 55, 62, 183, 184, 193, 194, 196, 197, 319, 320, 652-56, 678-698; (1882) *id.* (Govt. Printing Office, 1883) 446, 451, 452, 454, 516-520; (1890) *id.* (Govt. Printing Office, 1891) 701; (1894) *id.* (Govt. Printing Office, 1895) 525-536; II (1895) *id.* (Govt. Printing Office, 1896) 1255-1266, 1318 *et seq.*; (1902) *id.* (Govt. Printing Office, 1903) 42, 420, 442, 549, 684, 936, 1048. See also, Executive Order 9417, January 22, 1944, 9 F.R. 935.

is, in effect, that the Turks who at the turn of the century ordered what President Cleveland formally condemned as the "bloody butchery of men, women and children"[9] solely because they were Armenians, and those who in Czarist days similarly brought about the pogroms in Russia of hapless Jews, only because they were Jews,[10] were "political" offenders whose extradition to Turkey or Russia to stand trial for their unspeakable crimes would have been necessarily denied had they escaped to our shores.[11]

The case is one of first impression, for never before has an alleged perpetrator of such crimes sought refuge here and become the object of extradition proceedings. On the other hand, that this *might* happen was not altogether unforeseen. It was, as already noted, the subject of careful consideration in 1945 at the Inter-American Conference on Problems of War and Peace, and again in 1946 and 1947 in the General Assembly of the United Nations, with resultant solemn international acts, to which the United States was a party, plainly calculated to assure members of the United Nations, including Yugoslavia, that members of the United Nations, including the United States, would

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[9] Grover Cleveland, *loc. cit. supra*, n. 8.

[10] See, (1903) *Foreign Relations of the United States* (Govt. Printing Office, 1904) 712; Luzzatti, *God in Freedom* (Macmillan, 1930) 712, 713, citing *Termination of the Treaty of 1832 between the United States and Russia—Hearing before the Committee on Foreign Affairs of the House of Representatives, December 11, 1911* (Rev. Ed.) p. 313.

[11] Article III of the Extradition Treaty of 1874 with Turkey, II Malloy, *Treaties, Conventions, etc.*, 1341, 1342, and Article III of the Extradition Treaty of 1887 with Russia, *id.* 1527, 1528, like Article VI of the Treaty here involved, expressly exclude offenses of a "political character" as a basis for extradition.

upon proper demand surrender just such alleged malefactors as respondent, for trial in the countries where atrocious crimes of the kind here involved were committed.

REASONS FOR GRANTING THE WRIT

1. In holding that resolutions of international bodies, concurred in by the United States and having pertinency to the construction and application in particular circumstances of a treaty provision common to most, if not all, treaties of a class to which nations generally, including the United States, are parties, are not to be considered in construing and applying such a treaty provision in such circumstances, the Court below has decided an important question of federal law which has not been, but should be, settled by this Court.

The Court below (App. B, p. 16a, *infra*) dismissed the international acts to which the United States was thus a party as "not [having] sufficient force of law to modify long standing judicial interpretations of similar treaty provisions", i.e., similar to the provisions of Article VI of the Treaty with which we are here concerned (App. D, pp. 18a-20a, *infra*). It is not clear what "judicial interpretations" the Court below had in mind, for it refers to none, and, as the discussion below more fully develops, insofar as the interpretation of similar treaty provisions is concerned, none of the cases cited in the opinion below has even the most remote relevance to the case at bar. See *infra*, pp. 40-44.

The vital role of the United Nations and of regional organizations of states within the purview of its Charter, in the solution of international problems of the gravest consequence to this as well as to other nations, renders it essential that this Court settle, as a matter of federal law, whether resolutions of the General Assembly of the United Nations, such as those of February 13, 1946, and October 31, 1947, the former unani-

nously adopted, and the latter fostered by the United States in the manner and circumstances, and for the purposes plainly stated by the President in his *Report to the Congress, supra,* pp. 14, 15, are or are not to be given effect in the interpretation of the provisions of a treaty to which they are clearly pertinent.

It need not be urged, and it is not, that these or any other resolutions of the General Assembly of the United Nations have force and effect *as law*. It is, however, urged that when the family of nations, acting formally, adopts resolutions such as these, premised necessarily upon a general understanding among them as to the meaning and effect of a type of provision common to treaties of a class to which they are parties, such resolutions should be taken into account, and accorded great weight in construing and applying a provision of that type contained in any treaty in that class.

The pertinency of the resolutions is manifest. The resolutions call upon each member of the United Nations, as well as non-members, upon the demand of a member and the making of a *prima facie* case, to surrender for trial to the country where war crimes as defined by the Agreement of August 8, 1945, were committed, persons charged with the commission of such crimes. Yet, the Court below has held that the demand for respondent which charges him with crimes clearly within the definition of war crimes contained in the Agreement of August 8, 1945, is, as a matter of law, insufficient on its face as charging only offenses of a "political character" within the meaning of Article VI of the Treaty. But the provisions of that Article, excluding offenses of a "political character" from extraditable offenses are not unique. Nor are such pro-

visions common merely to extradition treaties to which the United States is a party. On the contrary, provisions of this kind, in one form or another, are well-nigh universal in extradition treaties between nations generally, and in national statutes governing extradition. Thus, in the comment on the "political offense" clause of a proposed international convention on extradition, it is said in Harvard Research in International Law, Pt. 1, *Extradition,* (1935) 29 Am. J. Int. L. Supp., 107, 108, 109, 110:

> The provision contained in this paragraph is based on the political character of the act, and is in conformity with a principle now accepted generally in theory by the majority of text-writers and universally in the practice of States as manifested in their treaties. Extradition treaties concluded in the past hundred years, with few exceptions, and all multipartite conventions and drafts contain a provision exempting, in mandatory or in permissive form and subject to various limitations, political offenses from their operation. A great number of the national extradition statutes similarly provide for the non-extradition of persons accused of offenses of a political character.
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> * * *
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> * * * the great majority of treaties and draft conventions examined contain provisions phrased, in mandatory form either precluding the requested State from surrendering a person sought for a political offense, or enjoining the requesting State from seeking the extradition of a person accused of a political offense. * * *
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> * * *
>
> It may be mentioned that the majority of the national extradition statutes also use the mandatory form in precluding the extradition of persons charged with political offenses. * * *

Obviously, the members of the United Nations, including the United States, must have been well aware of this almost uniform pattern of excluding political offenses from offenses extraditable under treaties to which they were parties. Nevertheless, they called upon one another, the United States included, and non-members as well, to surrender alleged war criminals, when demand was made and a *prima facie* case established. Certainly, the premise underlying such resolutions was that the "political offense" clauses in treaties to which they, including the United States, were parties, and similar provisions in their statutes, did not bar the extradition of those charged with war crimes as defined by the Agreement of August 8, 1945, *supra*, pp. 10-11.

This appears clearly from the circumstance, emphasized by the President in his *Report to the Congress*, *supra*, pp. 14-15, that the resolution adopted October 31, 1947, was proposed by the United Kingdom in collaboration with the United States, in opposition to a resolution proposed by Yugoslavia, and that Section 6 of Yugoslavia's defeated proposal (*U. N. Yearbook, 1946-47*, pp. 220-221) contained a provision not mentioned by the President and not to be found in the successful Anglo-American proposal, which would have had the United Nations call upon its members

> to conclude bilateral conventions for the extradition of war criminals and quislings and to implement such conventions scrupulously.

Furthermore, it must be apparent from the President's *Report to the Congress*, *supra*, pp. 14-15, in which he describes both the 1946 and 1947 resolutions of the United Nations as relating to the extradition of war criminals, that in opposing the resolution

proposed by Yugoslavia, substantively upon the ground "that mere allegations were not sufficient to justify extradition and that identity and guilt of the persons sought should be adequately established by *prima facie* evidence", which, as the President points out, was required by the resolution supported by the United States and adopted, the United States, and the United Nations in adopting it, took the position that compliance with such conditions would result in extradition. It must also be clear that it was the position of the members of the United Nations, including the United States, that new extradition treaties were not necessary to effect the extradition of war criminals, for the resolution adopted with the support of the United States contains no provision comparable to Section 6 of the resolution proposed by Yugoslavia. This inescapable inference finds further support in the circumstance that even before Yugoslavia did, the United Nations War Crimes Commission[12] suggested the adoption of a multilateral convention between its members with respect to the surrender of war criminals, a principal purpose of which was to "exclude the possibility of the refusal of surrender on the ground that the acts charged had the character of political offences". Schwelb, *United Nations War Crimes Commission*, (1946) XXIII Br. Y.B. Int. L. 363, 372. But no such convention materialized because "some members, particularly the Great Powers, maintained * * * there was no need for treaty provisions".

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[12] An organ or agency of the United Nations, the members of which were: Australia, Belgium, Canada, China, Czechoslovakia, Denmark, France, Greece, India, Luxembourg, the Netherlands, Norway, New Zealand, Poland, the United Kingdom, the United States and Yugoslavia. See Schwelb, *op. cit. infra* in the text.

Schwelb, *loc. cit. supra.*[13] And, in his report to the President as American representative on the War Crimes Commission, Mr. Justice Jackson said (Jackson, *Atrocities and War Crimes*, XII *Bull.*, Dept. of State, June 10, 1945, pp. 1071-2):

> A second class of offenders, the prosecution of which will not interfere with the major case, consists of those who, under the Moscow Declaration, are to be sent back to the scene of their crimes for trial by local authorities. * * * *The part of the United States in these cases consists of the identification of offenders and the surrender on demand of those who are within our control.* (Emphasis supplied.)

That this was the position of the United States finds further support in the fact that in the summer of 1944, if indeed not earlier, the United States called upon all neutral nations to refuse asylum to, and to surrender those charged with war crimes. See, *War Crimes and Punishment of War Criminals* (U.N. Information Organization) p. 23; II Oppenheim, *International Law* (7th ed., 1952) 588, 589. Nor was there

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[13] The author, who was legal officer of the Commission, does not identify the "Great Powers". In view of the illegal nature of respondent's entry and continued presence in the United States, *supra*, p. 6, it is interesting to note that the reason attributed to the unidentified "Great Powers" for their attitude towards the proposal for a multilateral convention was that any alleged war criminals would of necessity either "be prisoners of war in the hands of the armed forces of the requested state, or refugees present in its territory without legal authorization * * *." See Schwelb, *loc. cit. supra*. It will be noted, however, that this was not among the reasons given by the President, *supra*, pp. 14-15, for American and British opposition to the resolution proposed by Yugoslavia, and American and British sponsorship of the substitute proposal which became the resolution of October 31, 1947, *supra*, p. 13.

any suggestion that existing extradition treaties be amended or superseded.

Any suggestion that the resolutions of the General Assembly of the United Nations related only to alleged war criminals found in occupied enemy territory, who presumably could be dealt with summarily by the military, is manifestly untenable. Thus, the resolution of October 31, 1947, *supra*, p. 13, specifically reaffirmed the prior resolution of February 13, 1946, *supra*, pp. 11-12, which called upon not only members of the United Nations but

> The Governments of States which are not members of the United Nations also to take all necessary measures for the apprehension of such [i.e., war] criminals in their respective territories with a view to their immediate removal to the countries in which the crimes were committed for the purpose of trial and punishment according to the laws of those countries.

Is it conceivable that while thus asking neutral nations[14] to surrender alleged war criminals seeking asylum in their countries, the members of the United Nations were themselves prepared to surrender only suspects found in occupied enemy territory, and intended to give refuge to those who might reach their own territories? Of course not, and the resolution adopted by the American republics on March 6, 1945, at the Inter-American Conference on Problems of War and Peace, *supra*, pp. 15-17, makes it plain that certainly the American republics, including the United States, had no such thought in mind.

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[14] Other than the occupied enemy countries, the neutral nations were at the time the only non-members of the United Nations.

There is, moreover, other evidence that in adopting the resolutions of February 13, 1946, and October 31, 1947, *extradition*, not merely summary military action, was intended, and that the generally accepted limitations on extradition were well in mind. Thus, as already noted, in his *Report to the Congress, supra*, pp. 14-15, the President referred to both resolutions as relating to *extradition*. And, although the 1946 resolution went through the committee and the General Assembly without debate or dissent, there was some, although very little, discussion of it in committee, which the Chinese delegate summed up in committee without disagreement as follows (*Summary Records*, U.N. General Assembly First Committee, Jan. 11-Feb. 12, 1946, p. 22):

> * * * there was no doubt amongst all members that war crimes should be punished and war criminals extradited.

In the committee discussions on the 1947 resolution the British representative said (*Summary Records*, U.N. General Assembly Sixth Committee, Sept. 16-Nov. 26, 1947, p. 60) that

> It was the intention of the United Kingdom Government that war criminals against whom a real *prima facie* case had been made out should be extradited * * *.

And again (*id.*, p. 65) that

> Extradition would be granted, provided that a *prima facie* case had been established * * *.

The Ukraine representative, *id.*, p. 61, "recalled the resolution of the General Assembly of last year concerning the extradition * * * of war criminals * * *".

while the Czech representative made clearly meaningful the use of the term "extradition", by arguing (*id.*, p. 68) that since it was not used in the Moscow Declaration, *supra*, n. 5, p. 11, what was "envisaged [was] the handing over of war criminals without formalities inherent to the classical sense of the word 'extradition'.". Nevertheless, the Russian representative referred (*id.*, p. 72) to unfulfilled "requests for extradition of war criminals" and the Yugoslav representative, recognizing a distinction between traitors and quislings, on the one hand, and war criminals on the other (*id.*, pp. 73, 74) insisted that as to "the extradition of war criminals there remained no question". The Norwegian representative (*id.*, p. 76) "fully supported the principle of extradition of war criminals" but "did not think it was necessary to repeat the General Assembly resolution of the previous year".

The Swedish representative, like the Czech, made the meaning of the discussions unmistakable when he said (*id.*, p. 76) that "Sweden had no intention to shield war criminals. * * * but it reserved its right to apply to eventual cases its own legislation on extradition". Somewhat similarly, the Turkish representative, in supporting the British proposal observed (*id.*, p. 88) that "extradition should be carried out in accordance with both international and national legislation * * * and reserved the competence of national legislation in this matter", while the Argentine representative, also supporting the British proposal, made it plain (*id.*, p. 89) that "extradition laws in Argentina were based on the Constitution and must therefore be applied".

The United States representative was present, and although he entered the discussion from time to time, on no occasion did he, in committee or in the debate that followed in the General Assembly, indicate, directly or indirectly, that only summary military action, and not extradition in the classical sense, was involved, or that "war criminals" might be considered "political offenders" under treaties to which the United States was a party (*id.*, pp. 59, 66, 67, 77, 78, 88, 89; *Verbatim Record*, U.N. General Assembly, October 31, 1947; A.M., pp. 161-211). This silence is particularly significant in view of the reference in committee by the Colombian representative (*Summary Records, supra*, p. 84) to both the United Nations and Pan American resolutions as being in regard "to the extradition * * * of war criminals," and the statement of the Salvadorean delegate in the debate in the General Assembly (*Verbatim Record, supra*, A.M., pp. 32, 33) that:

> We feel that the extradition of war criminals should, of course, be granted, but that it is necessary for the government which is asked to surrender the criminals to have an opportunity to consider the evidence of the guilt of the persons named, and that it is also necessary that complete proof be submitted in regard to the identity of such persons. Without the fulfillment of those two conditions, we feel that no government is really entitled, from the point of view of human justice, to surrender any person who is claimed as a war criminal.
>
> In the constitutions of most of the Republics of America, there is a provision to the effect that two conditions must be met if extradition of any criminal is to be granted. First, the person must be responsible for the commission of a common

crime: that is, a crime which carries a penalty in the penal code of the country which is asked to extradite the person. There is a difference, as we all know, between common crimes and political crimes. I believe that, according to the provisions of the constitutions of most of the American Republics, no political criminal, so regarded by the government making the claim, is to be surrendered. The second condition which has to be met is that there must be submitted to the government receiving the claim evidence that the crime has really been committed and that the person named is really responsible for it.

As I have said, we find in the resolution presented by the delegation of Yugoslavia nothing which requires the presentation of any evidence. We are therefore definitely opposed to that resolution.

As regards the proposition submitted by the United Kingdom delegation, we feel that even that proposition is weak in one respect: it requires only *prima facie* evidence of guilt. We feel that substantial evidence should be required. Therefore, when we come to a discussion of the United Kingdom proposal, the delegation of El Salvador will move that the words "prima facie", in the next-to-the-last paragraph, be deleted from the text.

In view of the express exclusion of offenses of a "political character" from the categories of extraditable crimes under practically all, if not all, extradition treaties to which members of the United Nations, including the United States, are parties, the adoption of the resolutions of February 13, 1946 and October 31, 1947, *supra*, pp. 11-12, 13, necessarily presupposes a recognition that a distinction exists between war criminals and ordinary political offenders. Indeed, such a

distinction was expressly made in the preamble of the March 6, 1945, resolution of the Inter-American Conference on Problems of War and Peace, *supra*, p. 16. Similarly, in a resolution adopted on February 12, 1946 (*U.N. Yearbook, 1946-47*, pp. 74, 75), and expressly reaffirmed by the resolution of October 31, 1947, the General Assembly of the United Nations in so many words recognized the "necessity of clearly distinguishing between genuine refugees * * *, on the one hand, and * * * war criminals * * * on the other". Certainly, such a distinction was well in mind when the resolution of October 31, 1947, was considered and adopted, for it was implicit in the committee discussions reviewed above, and was clearly made by the Salvadorean delegate in the General Assembly debate.

Moreover, the United States member of the Sixth Committee, which considered and reported favorably the Anglo-American proposal which eventually became the resolution of October 31, 1947, both in an address to the Second Committee and in the debate in the General Assembly, said in support of the Anglo-American proposal and in refuting the Yugoslav claim reflected in the resolution proposed by Yugoslavia, that certain countries, including the United States, were not fully complying with the resolution of February 13, 1946 (State Dept. Pub. 3024, pp. 313-316; *Verbatim Record*, *supra*, A.M., pp. 161, 162 170, 171, 172 180, 181, 182 190):

> The United States supports the resolution favorably reported by the Sixth Committee, where the matter was considered at great length. The resolution of the Committee was adopted as a substitute for a resolution proposed by Yugoslavia in the Committee—and now proposed again here—

which was rejected by an overwhelming vote. The vice of the Yugoslav resolution was that it would have constituted a finding that certain Member states were not carrying out the recommendations previously made by the General Assembly on this subject.

In opening the debate and in continuing it in the Committee, the proponents of the resolution attacked the United States, the United Kingdom, and France * * * charging these nations with failure to carry out their obligations with respect to war criminals and quislings.

* * *

To have approved the Yugoslav resolution, particularly in the context of the debate would have been—and would be now—gross injustice. * * *

In order, however, that it might not be thought that the action of the Committee in any way tempered previous resolutions of the General Assembly calling for the punishment of war criminals and in order further to set down again certain criteria in connection with that [sic] surrender, the Sixth Committee * * * approved the resolution * * * which notes the steps already taken regarding war criminals, reaffirms the resolutions of the General Assembly of February 13, 1946 * * * of February 12, 1946, and of December 15 last.

The resolution now before us also recommends energetic continuation of the carrying out of responsibilities for the surrender and trial of war criminals. It further recommends that members of the United Nations who desire such surrender * * * should make their requests as soon as possible * * * that they support such requests with sufficient evidence to establish that a reasonable *prima facie* case exists * * *.

* * *

I feel obliged to give you * * * the reasons for the rejection in the Committee of the Yugoslav

resolution and the approval of the United Kingdom resolution. The reasons are that, rather than protecting war criminals as is charged, the Government of the United States took leadership in their punishment. * * *

* * *

We have surrendered to Yugoslovia, Poland, Czechoslovakia, the Soviet Union, Belgium, and the United Kingdom, in the aggregate, many hundreds of persons desired by them for trial. * * *

* * *

Therefore, to have acceded to the reckless and unfounded charge of failure on our part to fulfill our responsibility regarding war criminals would have been a distortion of history, including current history * * *.

It was said in Committee and, to some extent, repeated here this morning that in the case of particular individuals, we have not always surrendered as requested. That is true. It is true for the reason that often the request has not been accompanied by evidence even as to the identity of the individual or a reasonable evidentiary basis for surrender * * *.

* * *

In this connection, the United States surrenders no one for trial as a war criminal who we believe from the evidence is wanted simply as a political opponent of the government making the request and where evidence of complicity in crime is lacking. In our own country and elsewhere, we recognize the fundamental right of political opposition to the government in power. Such opposition standing alone cannot make a person a war criminal or a quisling or a traitor.

The membership of the United States in the United Nations and its participation in its deliberations and

decisions is no idle pursuit by the Executive of academic studies in the field of international politics, nor merely to afford opportunities for the exercise and improvement of forensic abilities. The Charter of the United Nations was ratified by the Senate as a treaty, 59 Stat. 1031, and United States participation in its affairs is governed by the United Nations Participation Act of 1945, 59 Stat. 619, as amended, Tit. 22 U.S.C. Sec. 287 *et seq.* Thus, the President is by law authorized to appoint the representatives of the United States in the United Nations General Assembly and in organs and agencies of the United Nations, Tit. 22 U.S.C. Sec. 287, subsecs. (c) and (d), and such representatives are required by law, Tit. 22 U.S.C. Sec. 287(a)

> at all times, [to] act in accordance with the instructions of the President transmitted by the Secretary of State unless other means of transmission is directed by the President, and * * * in accordance with such instructions, [to] cast any and all votes under the Charter of the United Nations.

Furthermore, the President is required by law, Tit. 22 U.S.C. Sec. 287(b)

> not less than once each year, [to] make reports to the Congress of the activities of the United Nations and of the participation of the United States therein * * *.

It was pursuant to this requirement that the President made his Report to the Congress, *supra*, pp. 14-15, concerning the General Assembly's adoption of the resolution of October 31, 1947, *supra*, p. 13, and the participation of the United States therein.

In these circumstances, it would seem to appear that this Court should settle the question, heretofore not passed on by it, whether formal international acts, such as resolutions, of the United Nations, participated in by the United States in the manner and circumstances and to the extent here present, are of sufficient force to be considered and given weight in construing and applying the provisions of a treaty to which such acts have obvious pertinence. *Cf. Oyama* v. *California*, 332 U.S. 633, 649-50, 673 (1948).

2. The international acts to which the United States was thus a party necessarily imply an Executive construction of treaty provisions such as are here under consideration, and in failing to give them any consideration in the construction of such provisions the Court below decided a federal question in a way in conflict with applicable decisions of this Court. Contrary to the opinion of the Court below, there are no "long standing judicial interpretations of similar treaty provisions" in conflict with what was necessarily the Executive interpretation.

It is fundamental, as this Court said in *Sullivan* v. *Kidd*, 254 U.S. 433, 442 (1921), that

> While the question of the construction of treaties is judicial in its nature, and courts, when called upon to act, should be careful to see that international engagements are faithfully kept and observed, the construction placed upon the treaty before us and consistently adhered to by the Executive Department of the government, charged with the supervision of our foreign relations, should be given much weight * * *.

See also, *Dainese* v. *Hale*, 91 U.S. 13 (1875); *Charlton* v. *Kelly*, 229 U.S. 447 (1913); *Factor* v. *Laubenheimer*, 290 U.S. 276 (1933). And, as the Court below, on another occasion, said in *United States* v. *Reid*, 73 F. (2d) 153, 156 (1934), cert. denied 299 U.S. 544:

> This rule would apply with even more cogency where the state department is negotiating with the other treaty-making power concerning the meaning and effect of a treaty, and during such negotiations insists upon a not unreasonable construction of its terms which is acquiesced in by the other power.

This would not only appear, under all of the circumstances, to be particularly true here, but should be especially applicable in the case of extradition treaties where, although foreign policy is "wholly confided by our Constitution to the political departments of the government, Executive and Legislative", *Chicago and Southern Air Lines* v. *Waterman Steamship Corp.*, 333 U.S. 103, 111 (1948), the application of such treaties is by law committed to the judiciary. Tit. 18 U.S.C. Sec. 3184.

There is, it would seem clear, necessarily inherent in the participation of the United States in the international acts under the circumstances, both above described, either a construction, or what is tantamount to a construction, by the Executive branch that war criminals were extraditable as such under existing treaties. For, having in mind that in "almost all the extradition treaties to which the United States has been a party there is a provision expressly declaring that persons charged with the commission of political offenses shall not be surrendered," II Hyde, *International Law* (2d Rev. Ed. 1951) 1020, the participation of the United States in the Inter-American Conference resolution of March 6, 1945, *supra*, pp. 15-17, and in the sponsorship of the United Nations resolution of October 31, 1947, *supra*, p. 13, is otherwise inexplicable. Moreover, as we have seen, both resolu-

tions were premised on there being a distinction between "war criminals" and "ordinary political refugees".

Furthermore, in the light of the special circumstances which gave rise to United States collaboration with the United Kingdom in the sponsorship of such resolution, as described in detail by the President in his *Report to the Congress, supra*, pp. 14-15, and the statement of the American representative in the General Assembly, *supra*, pp. 31-33, there is no escaping the conclusion that the Executive branch must have had specifically in mind the provisions of the extradition treaties such as that in force and effect between the United States and Yugoslavia. For, if "war criminals" were necessarily "political" offenders, not extraditable under such a treaty in any event, there could have been no purpose in the United States collaborating in the sponsorship of a substitute resolution for that offered by Yugoslavia, and insisting, as the President reported to the Congress, *supra*, p. 15, "that mere allegations were not sufficient to justify *extradition* and the identity and guilt of the persons sought should be adequately established by *prima facie* evidence." The insistence on this "great forward step", as the President called it in his statutory report, is consistent only with the view that with the fulfillment of these requirements (which in general terms coincide with the statutory requirements of Tit. 18 U.S.C. Sec. 3184), alleged "war criminals" would be extraditable under treaty provisions such as here under consideration. And, unless the Executive branch construed the "offense of a political character" clauses in existing treaties as not barring the extradition of war criminals as defined by the Agree-

ment of August 8, 1945, *supra*, pp. 10-11, to which the United States was a party, there would appear to be no reason why there should have been omitted from the resolution it supported, a provision such as the sixth section of the resolution proposed by Yugoslavia, *supra*, p. 23, calling for the conclusion of special bilateral conventions for the extradition of alleged war criminals.

It cannot be gainsaid that as history goes, this construction has not been of long duration. But the concern of the United States with war crimes and the surrender for trial of alleged war criminals, as such, did not arise until its entry into the War in December, 1941, and the earliest Allied pronouncement on these subjects was the Roosevelt-Churchill-Stalin Moscow Declaration of October 30-November 1, 1943, *supra*, p. 11. An Executive construction of existing treaties as not barring the extradition of war criminals, would appear to date from 1944, or perhaps somewhat earlier, when the United States first called upon neutral nations to surrender fugitive war criminals, *supra*, p. 25. Moreover, that construction was, as we have seen, consistently adhered to by the Executive branch when the adoption of measures to assure the return of fugitive war criminals to the scenes of their crimes for trial was under international consideration, as at the Inter-American Conference in March, 1945, *supra*, pp. 15-17, and the General Assembly of the United Nations in February, 1946, and October, 1947, *supra*, pp. 11-12, 13, and was necessarily the premise upon which the United States played the leading role in securing in the United Nations the adoption of the latter over the Yugoslav proposal. Such a construction in such circumstances is entitled to the great-

est of weight, not lessened because it is inferential rather than express. Thus, in *Pigeon River Improvement, Slide, & Boom Company* v. *Charles W. Cox, Ltd.*, 291 U.S. 138, 160, 161 (1934), this Court said:

> We think that it is proper to infer that the Congress, in view of the condition of the stream and the purpose of the improvements, did not consider the authority to make them and to impose a reasonable charge for their use, as being inconsistent with the treaty stipulation. We regard the action of the Congress, following that of the State, as a practical construction of the treaty as permitting these works and justifying the charge.
>
> The same may be said of the action of the Province of Ontario in providing for the complementary works on the Canadian side of the boundary and authorizing tolls for their use.

Nor is this a case like *Clark* v. *Allen*, 331 U.S. 503 (1947), where the precise language used in the treaty provisions under consideration had been for some eighty-seven years uniformly construed by the courts in a number of cases under different treaties, in precisely the situation there presented; and this Court declined to depart from such judicial construction even in the face of clear proof, then for the first time presented, that when the Executive first used the language in question, it was intended to mean something quite different. For here, notwithstanding the assertion of the Court below (App. B., p. 16a, *infra*), there are no "long standing judicial interpretations of similar treaty provisions" contrary to the Executive interpretation inherent in the international acts participated in by the United States in the circumstances described. The Court below cites no such interpretations in support of its statement, counsel have been able to find

none, and none of the cases cited by the Court below as dealing with "offense of a political character" clauses in extradition treaties is such an interpretation.

The cases cited by the Court below (App. B., pp. 9a-12a, *infra*) as being in this category are *In re Castioni*, [1891] 1 Q.B. 149; *In re Ezeta*, 62 Fed. 972 (N.D. Cal. 1894); *Ornelas* v. *Ruiz*, 161 U.S. 502 (1896); *Luis Oteiza y Cortes* v. *Jacobus*, 136 U.S. 330 (1890); *U. S. ex rel. Giletti* v. *Commissioner*, 35 F. (2d) 687 (2d Cir. 1929); and *Ex parte Kolczynski*, [1955] 1 Q.B. 540. In the *Castioni* case, the facts, as summarized by the Court in the *Ezeta* case, 62 Fed. at 998, were these:

> * * * Castioni was charged with the murder of one Rossi, by shooting him with a revolver in Switzerland. The deceased, Rossi, was a member of the state council of the canton of Ticino. Castioni was a citizen of the same canton. For some time previous to the murder, much dissatisfaction had been felt and expressed by a large number of inhabitants of Ticino at the mode in which the political party then in power were conducting the government of the canton. A request was presented to the government for a revision of the constitution of the canton, and, the government having declined to take a popular vote on that question, a number of the citizens of Bellinzona, among whom was Castioni, seized the arsenal of the town, from which they took rifles and ammunition, disarmed the gendarmes, arrested and bound or handcuffed several persons connected with the government, and forced them to march in front of the armed crowd to the municipal palace. Admission to the palace was demanded in the name of the people, and was refused by Rossi and another member of the government, who were in the palace. The crowd then broke open the outer

> gate of the palace and rushed in, pushing before them the government officials whom they had arrested and bound. Castioni, who was armed with a revolver, was among the first to enter. A second door, which was locked, was broken open, and at this time, or immediately after, Rossi, who was in the passage, was shot through the body with a revolver, and died very soon afterwards. * * * Castioni fled to England. His extradition was requested by the federal council of Switzerland.

It was held, on a showing of these facts, that Castioni's crime was an offense of a "political character". Conversely, in the *Ezeta* case, it was held that the killing of others by the president of a Latin-American republic and his associates in the course and for the purpose of putting down an armed rebellion against their government, in which the rebels were successful, was of such a "political character" as to preclude their extradition therefor. But there is nothing in the record here from which it can be concluded, that the murders laid to the respondent were committed *in the course and for the purpose of* suppressing or furthering a rebellion, even if it should be assumed that, as the Courts below purported judicially to notice (App. B., p. 14a, *infra*), "various factions representing different theories of government were struggling for power during this period in Croatia". Accordingly, while, as we shall later point out, these cases have a pertinence to this case in another connection, neither the *Castioni* case nor the *Ezeta* case is apposite as a construction of the "offense of a political character" clause in the circumstances here present.

The same is true of *Ornelas* v. *Ruiz*. There it was claimed that the crimes charged were offenses of a "political character", and proof was produced at the

hearing that at the time of their commission in Mexico, an armed rebellion was in progress against the government of that country, that the prisoners were partisans of the rebels and that their purpose was to "fight against the government". Indeed, the crimes alleged involved an attack on a detachment of Mexican government troops, the slaying of some, the capturing of others, the burning of their barracks, and the capture and destruction of their military equipment, as well as similar depredations committed on civilians and civilian property. At the conclusion of the hearing, the prisoners were held for extradition by a commissioner. A writ of *habeas corpus* releasng them was thereafter issued by a district court on the ground that the alleged offenses were of a "political character". In reversing the granting of the writ, this Court said, 161 U.S. at 511, 512:

> Can it be said that the commissioner had no choice on the evidence but to hold, in view of the character of the foray, the mode of attack, the persons killed or captured, and the kind of property taken or destroyed, that this was a movement in aid of a political revolt, an insurrection or a civil war, and that acts which contained all the characteristics of crimes under the ordinary law were exempt from extradition because of the political intentions of those who committed them? In our opinion this inquiry must be answered in the negative.

The *Luis Oteiza y Cortes* case is entirely irrelevant, for although it arose upon a *habeas corpus* petition of a prisoner held for extradition under a treaty, no question under the "offense of a political character" clause was involved or considered. The *Giletti* case is equally irrelevant. That was a *deportation*, not an

extradition case, and the relator sought by *habeas corpus* to avoid being deported to his native country on the ground that he faced prosecution there for illegal political activities prior to his immigration to the United States. The Court affirmed the dismissal of the writ on the grounds that the relator was properly deportable to the country of which he was a citizen as an alien who had been convicted here of crime and who had neither secured permission to enter any other country, nor shown that he could himself pay the expenses of transportation to any such country, if there should be one. In the course of its opinion, the Court said, 35 F. (2d) at 689:

> The record does show that by his conduct here he has apparently exposed himself to criminal prosecution in Italy, for which he is subject to an imprisonment of between 5 and 15 years. His offenses are apparently political, for which he could not be extradited.

What the relator's offenses in Italy were, the Court did not disclose and that case appears clearly not to be an interpretation of any "offense of a political character" clause, to which the Executive interpretation inherent in the United States' participation in the international acts above-described is contrary.

Nor is *Ex parte Kolczynski* such an interpretation. In that case the extradition of Polish seamen was sought for offenses committed in the furtherance of a successful mutiny at sea which ended in the seamen bringing their Polish-flag ship to port in England. At the hearing there was evidence that the prisoners mutinied and brought their ship to England because they had observed the "party secretary" aboard their ship (whose function it was to exercise supervision

over the crew's political leanings) overhearing and recording their conversations, and because they had good reason to believe that he was doing so for the purpose of preparing a case against them on account of their political opinions, for presentation when they returned to Poland. There was also evidence that while in England they had received vilifying letters purporting to come from relatives in Poland (which the prisoners denied they did) in effect charging them with being traitors, etc. It was held unanimously that the prisoners were not extraditable. One justice, under an English practice contrary to our own, *In re Lincoln*, 228 Fed. 70, 74 (E.D.N.Y. 1915), aff'd 241 U.S. 651; *In re Ezeta, supra*, 62 Fed. 972, 986, reached this conclusion on the ground that, regardless of whether the crimes charged were "offenses of a political character", the evidence showed that the prisoners' extradition was being sought "with a view to try or punish * * * [them] for a crime or an offence of a political character". The two other justices, however, rejected this view because "the court must not assume that the foreign state will not observe the terms of the treaty", and held that the "revolt of the crew was to prevent themselves being prosecuted for a political offence and * * * therefore, the offence had a political character". [1955] 1 Q.B. 547-549, 550.

Clearly, then, there are not, as the Court below seemed to think, "long standing judicial interpretations of similar treaty provisions" that would have to be "modified" in order to give effect to the Executive construction inherent in the participation of the United States, under the circumstances indicated, in the international acts above described. And even if it should be argued that some of the offenses defined as

war crimes by Article 6 of the Agreement of August 8, 1945, *supra*, pp. 10-11, are so essentially political in character that as to them the Executive interpretation could not fairly be given effect, this is hardly so as to those grouped together in paragraph (*c*) of such Article as "crimes against humanity",

> namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population * * *.

As to such crimes, the Executive construction recognizes the distinction made by Judge Lauterpacht, British member of the Court of International Justice and Whewell Professor of International Law at Cambridge, when he said, *The Law of Nations and the Punishment of War Crimes*, 1944 Br. Y.B. Int. L. 58, 90:

> * * * no demand for extradition * * * is likely—or ought—to succeed if it is contrary to the principle of non-extradition of political offenders. On the other hand, the very sanctity of that principle requires that it should not be abused for sheltering persons who, behind the screen of war, have been responsible for common crimes which have outraged civilized mankind.

So, too, in discussing the proposed international convention regarding genocide, it was said in (1949) 58 Yale L.J. 1142, 1154:

> Extradition provisions of the Convention would cause no dislocation of present American extradition policies. The Convention permits extradition only in accordance with laws and treaties presently existing. * * * The United States does not favor extradition of political offenders, * * * but its position does not conflict with the Convention's extradition provision. Genocide, in ef-

> fect mass-destruction, should not be considered a political crime for purposes of extradition. No political activity can justify the crime as defined. American procedures, moreover, would prevent extradition of any person against whom fabricated charges of genocide were made by a foreign government. * * *

See also, (1943) 43 Col. L. Rev. 960, 963-6; and Garcia-Mora, *The Present Status of Political Offenses in the Law of Extradition and Asylum*, (1953) 14 U. of Pitt. L. Rev. 371, 394-6, where it is concluded that the offenses defined in paragraph (c) of Article 6 of the Agreement of August 8, 1945, *supra*, pp. 10-11, are not "political" offenses and are extraditable as ordinary crimes.

Under all the circumstances, the nature, manner and extent of United States participation in the international acts hereinabove described, particularly in bringing about the adoption in committee and by the United Nations General Assembly of the resolution of October 31, 1947, and the defeat of the Yugoslav proposal, necessarily implied and were premised upon an Executive construction that war crimes as defined in the Agreement of August 8, 1945, *supra*, pp. 10-11, to which the United States was a party, were not offenses of a "political character" within the meaning of provisions of extradition treaties like that here involved, to which the United States was a party. In failing to give recognition, consideration and weight to such Executive construction, the Court below decided a federal question in a way in conflict with applicable decisions of this Court.

3. Wholly apart from any construction by nations generally, including the United States, and any Executive construction, the Court below decided a federal question in a way in conflict with applicable decisions of this Court in holding that it appeared from the face of the indictment, and the attachment thereto, taken together with the facts of which judicial notice was taken, that only "offenses of a political character" were charged in the indictment.

As already noted, in *Ornelas* v. *Ruiz*, 161 U.S. 502 (1896), *supra*, pp. 41-42, the Commissioner had, after hearing, held the prisoners for extradition, notwithstanding their plea that the offenses charged were "of a political character" and evidence which showed that there had been a rebellion against the demanding government, that the prisoners were supporters of the rebels and that the offenses charged included an attack on government troops, the killing of some, the wounding and kidnapping of others, the burning of their barracks, and the taking of military equipment, and that the prisoners' object and purpose was "to * * * fight against the government". *Habeas corpus* was applied for and granted on the ground that the offenses charged were clearly of a "political character". On review this Court reversed, saying, 161 U.S. at 509:

> Whether an extraditable crime has been committed is a question of mixed law and fact, but chiefly of fact * * *.

And, further, 161 U.S. at 511, 512:

> Can it be said that the commissioner had no choice on the evidence but to hold, in view of the character of the foray, the mode of attack, the persons killed or captured, and the kind of property taken or destroyed, that this was a movement in aid of a political revolt, an insurrection or a civil

> war, and that acts which contained all the characteristics of crimes under the ordinary law were exempt from extradition because of the political intentions of those who committed them? In our opinion this inquiry must be answered in the negative.

The Court below, however, held that as a matter of law the murder of the men, women and children, the infants, the aged and the clergymen, as alleged in the indictment and attachment thereto, were all offenses of a "political character". The Court below reached this conclusion by drawing an unwarranted inference from the circumstance, not of record, but judicially noticed that "various factions representing different theories of government were struggling for power during this period in Croatia" (App. B., p. 14a, *infra*) and the fact (R. 503) that at the time, respondent was "Minister of the Interior" in the "Cabinet of Ante Pavelic" (App. B., p. 13a, *infra*), presumably one of the "factions".

But in *Ornelas* v. *Ruiz*, the evidence was that there was in actual progress an armed rebellion against the government, that the prisoners were supporters of the rebels, that the victims included government troops, and that military property of the government was among that destroyed and captured. Here it does not appear from the indictment and there has been no showing that the judicially noticed "struggle for power" between "various factions representing different theories of government" involved an armed conflict, or that respondent's alleged victims were members or supporters, in one way or another, of any "faction" engaged in such "struggle", nor, indeed, that their deaths are attributable to it. It does not appear that respondent's alleged victims were other than innocent,

peaceful men, women and children, as the indictment describes them, not engaged in any revolutionary, counter-revolutionary or other political activities. And, while in *Ornelas* v. *Ruiz*, the prisoners' purpose, according to the evidence, was to "fight against the government", here the allegation of the indictment (R. 464) is that the respondent's alleged crimes were "based on criminal motives, hatred and the desire for power * * *".

Yet in *Ornelas* v. *Ruiz*, this Court held, as we have seen, that "in view of the character of the foray, the mode of the attack, the persons killed or captured", it was not *necessarily* to be concluded that "acts which contained all the characteristics of crimes under the ordinary law were exempt from extradition because of the political intentions of those who committed them." The conflict between this Court's decision in *Ornelas* v. *Ruiz* and the decision below would appear clear.

Concededly, the respondent was a politician and a member of the unrecognized Pavelic regime which the Germans and Italians purported to establish in Croatia. But, in and of itself, this cannot serve to supply the political purpose or motive as to which the record is barren, and which must necessarily be found before any ordinary crime such as murder is metamorphosed into an offense of a "political character". For, as *Ornelas* v. *Ruiz* clearly holds, it is not the law, and it would be a monstrous doctrine if it were, that every offense committed by a politician or in the course of a civil disturbance is necessarily an offense of a "political character". Furthermore, while the Court below quotes at length from the several opinions in *In re Castioni*, [1891] 1 Q.B. 149, which it describes as

"[p]erhaps the leading case on the subject", including two passages from the opinion of Hawkins, J., (App. B., pp. 10a-11a, *infra*) it fails even to refer to the following portion of the opinion of Hawkins, J., [1891] 1 Q.B. at 164, 165, which just precedes the part of his opinion it quotes first:

> Now, I entirely dissent, and I think all reasonable persons would dissent, from the proposition that any act done in the course of a political rising, or in the course of any insurrection, is necessarily of a political character. Everybody would agree, I think, with this—that it is not everything done during the period during which a political rising exists that could be said to be of a political character. A man might be joining in an insurrection, joining in a rising, joining in that which in itself is a pure political matter, but notwithstanding that he were engaged in a political rising, if he were deliberately, for a matter of private revenge or for the purpose of doing injury to another, to shoot an unoffending man, because he happened himself to be one of an insurgent crowd and had a revolver in his hand, no reasonable man would question that he was guilty of the crime of murder, because that offence so committed by him could not be said to have any relation at all to a political crime * * *.

Similarly, it is said in Moore, *Act of State in English Law* (Dutton, 1906) 116:

> If * * * it can be shown that the acts, though done in the course of a political disturbance, are not really referable to it, but are substantive acts of spoliation or vengeance, then * * * they would for purposes of extradition lose their political immunity * * *.

Thus, while it may be true that there were "various factions representing different theories of government

* * * struggling for power during this period in Croatia", it does not appear that the respondent's alleged victims were other than the "peaceful civilian[s]", etc., described in the indictment or mere "unoffending" individuals, who, to use Mr. Justice Hawkins' words, were done to death "deliberately * * * for the purpose of doing injury to another". In this regard the Court below seemed content to rely (App. B., pp. 13a-14a, *infra*) on the recitations contained in the prosecutor's "Explanation" attached to the indictment that (R. 511, 512)

> Direction and control over the concentration camps, over the internment of people in the camps and over the treatment * * * was discharged, along with Pavelic, by * * * Artukovic * * *. This has been established through numerous so-called legal and other kinds of orders which were prepared by * * * Artukovic himself, which he issued and signed alone or together with Pavelic.

And that

> Artukovic together with Pavelic prescribed a so-called legal order on August 16, 1941, on the "Ustasha Security Service" which under the "Legal Order" of November 25, 1941, controlled concentration camps and passed decisions on deportation to these camps.

But these passages demonstrate merely that the respondent had the means of committing mass murder, not that the murders were "political" in character.

The decision of the Court below seems to involve an untenable syllogism: (1) There was a struggle for political power among various factions in Croatia at the time when respondent's alleged victims were murdered there; (2) The respondent was at that time a

leader of one of the factions; *ergo,* (3) If the respondent murdered his alleged victims, his crimes were offenses of a "political character". But, clearly, even if the premises be accepted, the conclusion does not follow unless the murders were related to the struggle, and were motivated by a political purpose. *Habeas corpus* having been granted before hearing, no such showing has been made by the respondent, and there is nothing in the indictment or its attachment which, as a matter of law, requires that such inferences be drawn.

Furthermore, since the regime of which respondent was a leader went unrecognized by the United States, his acts even as such, are not *per se* political and thus immune from judicial scrutiny. *Latvian State Cargo & Passenger S.S. Line* v. *McGrath*, 188 F. (2d) 1000 (D.C. Cir. 1951), cert. denied 342 U.S. 816; *The Maret*, 145 F. (2d) 431 (3rd Cir. 1944). For, respondent's acts, even if "official", are not protected by the prophylactic rule which, to avoid prejudice to the Executive's conduct of foreign relations, precludes the Courts, in the absence of the Executive's consent, from passing upon the character of the acts of an officer of a recognized foreign government, as such, done within its territory. *Cf. Bernstein* v. *Van Heyghen Freres*, 163 F. (2d) 246 (2d Cir. 1947), cert. denied 332 U.S. 772; *Bernstein* v. *N. V. Nederlandsche Amerikaansche Stoomvart Maatschappij*, 173 F. (2d) 71 (2d Cir. 1949), mandate amended after Executive consent, 210 F. (2d) 375 (2d Cir. 1954). Indeed, in *In re Ezeta*, 62 Fed. 972 (N.D. Cal. 1894), relied on by the Court below, the status of the prisoners as officers of a recognized government attempting to suppress a revolt was not sufficient to preclude judicial inquiry to determine

whether the acts with which they were charged were *in fact* of a "political character", as they claimed, where the revolt had succeeded and recognition had in the meantime been withdrawn from the defeated government and granted to the successful revolutionaries.

So far as can be ascertained, there has been no other case (and the Court below has cited none) in which *before hearing* a prisoner was released on *habeas corpus* on the ground that the offense charged was not extraditable as being of a "political character". This is not surprising, for whether a particular offense is or is not an extraditable offense is, as this Court said in *Ornelas* v. *Ruiz*, *supra*, 161 U.S. at 509, "a question of mixed law and fact, but chiefly of fact". So, too, in Harvard Research in International Law, Pt. 1, *Extradition*, (1935) 29 Am. J. Int. L., Supp., 113, it is said:

> No satisfactory and generally acceptable definition of a political offense has been found yet, and such as have been given are of little practical value, since, as Judge Moore pointed out, "the question whether a particular act comes within that category is preeminently circumstantial."[15]

Moreover, for an offense to be of a political character, it has been authoritatively stated that it must have been committed in the furtherance of one side or another of a *bona fide* civil disturbance. Thus, in *In re Meunier*, [1894] 2 Q.B. 415, 419, Mr. Justice Cave said:

> It appears to me that, in order to constitute an offence of a political character, there must be two or more parties in the State, each seeking to impose the Government of their own choice on the

[15] 1 Moore, *Extradition* (1891) 308

> other, and that, if the offence is committed by one side or the other in pursuance of that object, it is a political offence, otherwise not.

A similar test is laid down in 2 Stephen, *History of the Criminal Law of England* (1883) 70, 71, where it is said that to constitute a political offense, the offense must be a part of group activity, "incidental to and * * * part of political disturbances." And in *In re Castioni, supra,* [1891] 1 Q.B. at 159, Mr. Justice Denman said:

> The question really is, whether, upon the facts, it is clear that the man was acting as one of a number of persons engaged in acts of violence of a political character with a political object, and as part of the political movement and rising in which he was taking part.

While the Courts below purported, without reference to any source for their information, to take judicial notice that at the time in question "various factions" were "struggling for power" in Croatia, there is nothing in the indictment or the attachment thereto indicating any such situation at the time and place of the commission of the alleged offenses, or that respondent's alleged victims met their fate as a result of it. It does not appear that there was in fact any civil disturbance or that the offenses charged were referable to a civil disturbance, even if there were one, as the Courts below apparently believed. It would appear clear from the attachments to the amended complaint that the respondent's alleged victims met their fate because of their race or nationality. What political purposes can be claimed for the alleged murders of the 230 children under the age of fourteen, including infants in arms, the 147 Serbian priests and the 48

Jewish rabbis and cantors? So far as appears from the face of the indictment and its attachment, what was involved was a gigantic racial lynching-bee, and it is beyond belief that the United States would agree that such offenses against minority groups within its borders would be of such a "political" character as to immunize its perpetrators from extradition from any foreign country in which they might seek refuge.

Furthermore, it would seem abundantly clear that whatever other elements are necessary to transform acts having all the elements of ordinary crimes into political offenses, the one essential is that they be directed *against a government or against a group trying to seize the government of a country.* Thus, in *In re Meunier, supra,* [1894] 2 Q.B. at 419, the Court, in refusing a writ of *habeas corpus* to a bomb-throwing anarchist, held that the crimes charged to the prisoner were not of a "political character" so as to bar extradition, not only because they were not committed, to paraphrase Mr. Justice Cave's remarks quoted *supra*, pp. 53-54, in an effort to sustain or grasp governmental power, but also because they were

> * * * directed primarily against the general body of citizens.

So, too, in the case at bar. There is nothing in the indictment or its attachment from which it can be inferred that respondent's alleged victims were of a party in contest with his for governmental power. On the contrary, so far as appears, all of respondent's alleged victims, and certainly the children whose murders are alleged, were peaceful people belonging to no party engaged in any struggle for such power. Indeed, a reading of the Yugoslav indictment leaves

no doubt but that the offenses alleged were directed against a general body of citizens in Croatia of certain races and national origins, and not against a government or a party contending for governmental power.

It would thus appear clear that the decision of the Court below, in holding that the alleged crimes are, as a matter of law, offenses of a "political character", has decided a federal question in a way in conflict with an applicable decision of this Court.

IN CONCLUSION

In view of the questions concerning the meaning and the effect to be given to Executive action which this proceeding poses, it is to be regretted that the Government has not appeared as *amicus* in this branch of the case, as it did in the other, where the question was whether there was an extradition treaty in force and effect between the United States and Yugoslavia. See *Ivancevic* v. *Artukovic*, 211 F. (2d) 565 (9th Cir. 1954), cert. denied 348 U.S. 818, rehearing denied 348 U.S. 889. But in its *amicus* brief below in the other branch of the case, copies of which were lodged with the Clerk of this Court in opposition to the petition for certiorari then filed by the present respondent, the Government said (p. 5):

> As the decision, [i.e., of the District Court that no treaty was in effect] if not reversed, will affect the entire treaty structure, it is believed that the Government's interest in the case transcends in importance the interest of the parties to these proceedings whose sole interest is the matter of the possible extradition of the appellee. The Executive Branch of the Government is not presently concerned with this phase of the case and will not be concerned with it unless it shall have been certified to the Department of State by the extradi-

tion magistrate pursuant to the provisions of 18 U.S.C. 3184.[16]

[16] In this connection, it should be noted that the Yugoslav Government formally requested the United States to surrender the respondent as an alleged war criminal in 1946, when he was believed to be in American-occupied Austria or Italy, and again in 1951, when it was ascertained that he actually was in Los Angeles, California (R. 79, 80). In response to the latter request the Department of State replied (R. 80-82):

> • • • as a result of the circumstances attending Dr. Artukovic's entry into and continued stay in this country proceedings have been instituted • • • with a view to his deportation. If the deportation of Dr. Artukovic is not effected, the Secretary of State will be pleased to give consideration, after the necessary forms of law have been complied with, to a request • • • for the extradition of the accused pursuant to the provisions of the Extradition Treaty of October 25, 1901 • • •. In this connection it is pointed out that, in accordance with the provisions of Title 18, U.S.C. sec. 3184, extradition from the United States can be effected only on the basis of a treaty • • • of extradition.
>
> • • •
>
> it • • • [is] not intended • • • to imply that it would be necessary • • • to await the outcome of the deportation proceedings • • • before making a formal request for • • • extradition • • • or before a warrant could be obtained for the provisional arrest and detention with a view to the extradition of the accused. The formal request for the extradition of Dr. Artukovic may be filed at any time and, acting in accord with the provisions of Title 18, U.S.C., Section 3184, a duly authorized representative of the Yugoslavia Government, possibly one of its Consular officers • • •, could be at liberty to swear out a warrant for the arrest of the accused with a view to his extradition, notwithstanding that deportation proceedings are pending. The Department of State cannot give any assurance, however, as to what action may be taken following the issuance of such a warrant of arrest since that will be within the jurisdiction of the judicial branch of the Government.
>
> Finally, the Department of State wishes to point out that • • • it is without authority to act in the matter until it shall have received from the extradition magistrate a transcript of the proceedings in the hearing required by Title 18, U.S.C., Section 3184.

The Government has apparently adhered to that decision, and accordingly, neither the Court nor the parties have the benefit of its views on this branch of the case. But this is not unusual in extradition cases, even in those which, like this, pose questions of the utmost importance to the Executive branch in its conduct of foreign affairs. See, e.g., *Terlinden* v. *Ames*, 184 U.S. 270 (1902); *Charlton* v. *Kelly*, 229 U.S. 447 (1913); *Factor* v. *Laubenheimer*, 290 U.S. 276 (1933); *Valentine* v. *U. S. ex rel. Neidecker*, 299 U.S. 5 (1936). The Government's participation in the previous aspect of this case would appear to have been exceptional.

But be that as it may, this proceeding involves an important question of federal law, which has not, but in the circumstances in which the world now finds itself, should be settled by this Court. It also involves decisions on questions of federal law which are in direct conflict with applicable decisions of this Court. Accordingly, and for all of the reasons hereinabove set forth, this petition should be granted.

Respectfully submitted,

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SEPTEMBER 16, 1957

APPENDIX A

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

No. 13467—PH

ANDRIJA ARTUKOVIC, *Petitioner*,

vs.

JAMES J. BOYLE, United States Marshal, *Respondent*.

ORDER FOR ISSUANCE OF WRIT OF HABEAS CORPUS

The holding of this court—107 F. Supp. 11—that no treaty was in existence between the United States of America and the country now known as Yugoslavia, was reversed by the United States Court of Appeals for the Ninth Circuit—211 F. 2d 565, Certiorari denied 348 U.S. 818.

Article VI of the Treaty, in its pertinent portion, provides as follows:

> "A fugitive criminal shall not be surrendered if the offense in respect of which his surrender is demanded be of a political character, or if he proves that the requisition for his surrender has, in fact, been made with a view to try or punish him for an offense of a political character."

The matter is before the court on a Petition for Writ of Habeas Corpus prior to any hearing by a Committing magistrate. The function of the court at this time on this hearing is not that of a Committing magistrate, (Wright v. Henkel, 190 U.S. 40), and its power on a writ prior to such a hearing is confined to the limited and narrow question as to whether or not the Complaint states an extraditable offense under the treaty. Hence, this court cannot at this time consider that section of the treaty which provides that one shall not be surrendered "if he proves

that the requisition for his surrender has, in fact, been made with a view to try or punish him for an offense of a political character." If the defendant can make such proof, the time and place to make it is at the hearing before the Committing magistrate. This court may now only consider whether or not the facts set forth on the face of the Complaint, together with the facts of which the court may take judicial notice (Jones v. United States, (1890) 137 U.S. 202, at 214), make the offense in respect of which the surrender of petitioner is demanded one "of a political character."

The text of the Complaint differs from the Indictment, but it has attached to it a copy of the Indictment as it was filed in the demanding country. The text of the Indictment made in the demanding country controls over the text of the Complaint wherein there is any difference. And the whole Indictment must be read to determine whether or not within its four corners the conduct complained of was "of a political character."

The Indictment charges that the petitioner was "Minister of the Interior" from April 16, 1941, to October 10, 1942, in the cabinet of a government called "Pavelic" government. Many references are made to the fact that during the entire period involved in the Indictment, the petitioner occupied such position in such government. The court takes judicial notice of the fact that prior to, or at, or about, the time of the invasion of Yugoslavia by the German armies in early April, 1941, the head of the government of Yugoslavia, and all of the principle officials of that government, fled the country; and that on April 10, 1941, the portion of Yugoslavia known as "Croatia" established an independent government with a full set of officers, and sought recognition by other governments (and secured recognition by some governments), in which the petitioner became an official and was Minister of the Interior of that government during all of the period of time covered by the Indictment.

It appears from the face of the Indictment that all of the asserted offenses for which extradition is sought were the result of "orders" issued by the petitioner, acting as such official of the above-mentioned government during the time of war.

The Indictment is in vehement language, and it and the briefs of the parties reflect the animus which has existed between the Croatians and the Serbs for many hundreds of years, as well as the deep religious cleavage known to exist among the peoples in the Balkans.

The Court has not counted the number of persons named, but notes that according to the parties, the Complaint names 1,293 persons as having been killed on "orders" of the petitioner.

But the Indictment does not stop at that. In Paragraph 7 on page 9, it is alleged that 30,000 unidentified persons were killed on "orders" of the petitioner. And further, in Paragraph 7 on page 14, approximately 3,000 more unidentified persons are alleged to have been killed on "orders" of the petitioner. In Paragraph 8 on page 15, it is alleged that as a result of "orders" of the petitioner, 200,000 persons were killed. On page 17, it is alleged that a total of 17,600 unidentified children were killed on "orders" of the petitioner.

It would be a work of supererogation to analyze the Indictment further. Though the Indictment is not bad because it charges the death of more than one person, the plain reading of the Indictment here makes it immediately apparent that the offenses for which the surrender of the petitioner is sought, were offenses of a political character. (In re Ezeta, 62 Fed. 972, and cases there cited.) See also: Hackworth—Digest of International Law, Vol. IV, 1952 Ed., page 45 et seq., Section 316, and cases there collected, which show that officials of the United States, Mexico and many other countries on similar accusations, have uniformly held that conduct, such as that with

which petitioner is charged in the Indictment here, was conduct of a political character and not extraditable under a treaty in terms such as the one before the court.

The petitioner is clearly entitled to the Writ of Habeas Corpus, and it is hereby ordered that such Writ of Habeas Corpus issue, and that thereupon petitioner be discharged and his bail exonerated.

Dated: Los Angeles, California, this 3rd day of April, 1956.

/s/ PEIRSON M. HALL,
United States District Judge.

[Endorsed]: Filed April 3, 1956.

Docketed and entered April 4, 1956.

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 15,217

June 24, 1957

BRANKO KARADZOLE, Consul General of the Federal People's Republic of Yugoslavia, and ROBERT W. WARE, United States Marshal, *Appellants*,

vs.

ANDRIJA ARTUKOVIC, *Appellee*.

Appeal from the United States District Court for the Southern District of California, Central Division

Before: STEPHENS, HEALY and POPE, Circuit Judges

STEPHENS, Circuit Judge

This is a case of first impression involving extradition of an alleged World War II war criminal. Rafo Ivancevic, Consul General of the Federal People's Republic of Yugo-

slavia, in August, 1951, filed, with the United States Commissioner at Los Angeles, California, a formal request upon behalf of his country that an order issue for the extradition of appellee Andrija Artukovic, alias Alois Anich, to Yugoslavia, in which country a warrant is outstanding for his arrest as a fugitive charged with the crime of murder.[1] An amended complaint was filed October 15, 1951. The Commissioner ordered Artukovic held by the United States Marshal, and Artukovic thereupon petitioned the District Court for the issuance of the writ of *habeas corpus* praying that the court order his release. Artukovic attacked the jurisdiction of the proceedings on two grounds: i.e., that the charge against him was of a political nature and therefore was not an extraditable offense,[2] and that no treaty of extradition existed between the United States and Yugoslavia. After a hearing, the District Court held that the extradition treaty of 1902 between the United States of America and the Kingdom of Servia (Serbia) was not in force and effect between the United States of America and Yugoslavia, and ordered the release of appellee Artukovic. *Artukovic* v. *Boyle*, 107 F. Supp. 11. The United States and Rafo Ivancevic, as Consul General of Yugoslavia, appealed. This Court reversed, holding that the extradition treaty between the United States and the Kingdom of Servia (Serbia) in 1902 is a valid and effective treaty between the United States and the Federal People's Republic of Yugoslavia and remanded the case to the District Court for the adjudication of other issues in the case. *Ivancevic* v. *Artukovic*, 9 Cir., 1954, 211 F.2d 565, certiorari denied 348 U.S. 818, rehearing denied 348 U.S. 889. Further hearings were held in the District Court as to the remaining issue, and that Court decided

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[1] Title 18 U.S.C.A. § 3184; Article II of the Treaty of Extradition between the United States of America and the Kingdom of Servia (Serbia), proclaimed May 17, 1902, 32 Stat. 1890.

[2] Crimes of a political nature are specifically excluded as subjects for extradition under Article VI of the Treaty of Extradition between the United States of America and the Kingdom of Servia.

that the alleged offenses charged in the amended Complaint were of a "political character" within the meaning of Article VI of the treaty[3] and that therefore appellee Artukovic could not be extradited. The District Judge pointed out that the matter was before him prior to any hearing by a committing magistrate, and the sole function of the court was to determine whether on the face of the pleadings an extraditable offense under the treaty was stated. The court noted that the text of the amended Complaint differed from the Indictment, but that the Complaint had attached to it a copy of the Indictment as it was filed in the office of the County Public Prosecutor, Zagreb, Yugoslavia. The District Court read the Complaint and the Indictment as a whole and made the following comments in its Order:

> "The Indictment charges that the petitioner was 'Minister of the Interior' from April 16, 1941 to October 10, 1942, in the cabinet of a government called 'Pavelic' government. Many references are made to the fact that during the entire period involved in the Indictment, the petitioner occupied such position in such government. The court takes judicial notice of the fact that prior to, or at, or about, the time of the invasion of Yugoslavia by the German armies in early April, 1941, the head of the government of Yugoslavia, and all of the principle [sic] officials of that government, fled the country; and that on April 10, 1941, the portion of Yugoslavia known as 'Croatia' established an independent government with a full set of officers, and sought recognition by other governments (and secured recognition by some governments), in which the petitioner became an official and was Minister of the

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[3] Article VI of the treaty, in its pertinent portion, provides as follows:

> "A fugitive criminal shall not be surrendered if the offense in respect of which his surrender is demanded be of a political character, or if he proves that the requisition for his surrender has, in fact, been made with a view to try or punish him for an offense of a political character."

Interior of that government during all of the period of time covered by the Indictment.

"It appears from the face of the Indictment that all of the asserted offenses for which extradition is sought were the result of 'orders' issued by the petitioner, acting as such official of the above-mentioned government during the time of war.

"The Indictment is in vehement language, and it and the briefs of the parties reflect the animus which has existed between the Croatians and the Serbs for many hundreds of years, as well as the deep religious cleavage known to exist among the peoples in the Balkans.

"The Court has not counted the number of persons named, but notes that according to the parties, the Complaint names 1,293 persons as having been killed on 'orders' of the petitioner.

"But the Indictment does not stop at that. In Paragraph 7 on page 9, it is alleged that 30,000 unidentified persons were killed on 'orders' of the petitioner and further, in Paragraph 7 on page 14, approximately 3,000 more unidentified persons are alleged to have been killed on 'orders' of the petitioner. In Paragraph 8 on page 15, it is alleged that as a result of 'orders' of the petitioner, 200,000 persons were killed. On page 17, it is alleged that a total of 17,600 unidentified children were killed on 'orders' of the petitioner.

"It would be a work of supererogation to analyze the Indictment further. Though the Indictment is not bad because it charges the death of more than one person, the plain reading of the Indictment here makes it immediately apparent that the offenses for which the surrender of the petitioner is sought, were offenses of a political character. (In re Ezeta, 62 Fed. 972, and cases there cited.) See also: Hackworth—Digest of International Law, Vol. IV, 1952 Ed., page 45 et seq., Section 316, and cases there collected, which show that officials of the United States, Mexico and many other countries on similar accusations, have uniformly held that conduct, such as that with which petitioner is charged in the Indictment here, was conduct of

a political character and not extraditable under a treaty in terms such as the one before the court."

The District Judge held (for the reasons above set forth) that Artukovic was entitled to the writ of *habeas corpus* and ordered its issuance and his discharge from custody. *Artukovic* v. *Boyle*, 1956, 140 F. Supp. 245. Appellant, Branko Karadzole, substituted as Consul General of the Federal People's Republic of Yugoslavia, appeals from that judgment.[4]

THE APPEAL

This proceeding arises on *habeas corpus* prior to hearing before a committing magistrate, and is entirely proper if the District Court confines its determination to the question whether the committing magistrate has jurisdiction.[5] *Terlinden* v. *Ames*, 1902, 184 U.S. 270, *In re Heilbonn*,

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[4] In the earlier appeal to this Court, the United States filed an amicus curiae brief requesting reversal of the District Court judgment as to the non-existence of a valid treaty between the United States and Yugoslavia. It was stated in the government's brief that the "Executive Branch of the Government is not presently concerned with this phase of the case [whether Artukovic is extraditable under the treaty] and will not be concerned with it unless and until it shall have been certified to the Department of State by the extradition magistrate pursuant to the provisions of 18 U.S.C. § 3184." The government has filed no brief in the instant appeal and Robert W. Ware, U. S. Marshal, is only a nominal party.

[5] We find in II Hyde, *International Law* (2nd Revised Edition, 1945), p. 1026, footnote 3, the following language which is here pertinent:

> "• • • The situation [that there is no appeal from the decision of the committing magistrate] would be otherwise, however, in the fanciful case where, irrespective of the testimony offered, it should appear from the allegations of the complaint that extradition of the accused was sought in order to prosecute him for a political offense, and the decision of the committing magistrate was adverse to the contentions of the prisoner."

In the instant case we have no decision of the magistrate, but if the complaint and attached documents clearly show a political offense, such decision would not be necessary.

N. Y., 1853, 1 Parker, Cr.R. 429. The committing magistrate has jurisdiction, at this stage of the case, if there is a treaty and the commission of extraditable offenses is charged. *Terlinden* v. *Ames*, supra; *In re Luis Oteiza y. Cortes*, 1889, 136 U.S. 330; *In re Stupp*, 1875, 12 Blatchf. 501, 23 Fed. Cas. No. 13,563; *Ornelas* v. *Ruiz*, 161 U.S. 508; *Fernandez* v. *Phillips*, 268 U.S. 211. In *Terlinden* v. *Ames*, supra, the writ of *habeas corpus* was issued before the examination by the commissioner was entered upon, and the inquiry was held to be confined to the question of jurisdiction of the commissioner or magistrate. It was therein determined that the committing magistrate had jurisdiction and the petition for the writ was dismissed. But it was pointed out in the case that "On the face of the complaint extraditable offences were charged to have been committed. . . ."

We have previously held that a valid treaty exists between the United States and Yugoslavia. *Ivancevic* v. *Artukovic*, supra. The sole question therefore before the District Court was whether on the face of the Complaint and the attached Indictment, together with the facts of which the court could take judicial notice, it could clearly be said that the offenses charged were of a political character. Appellant argues that it was error for the District Court to so hold. We initially determine this point without considering any possible legal significance that might result because the offenses charged are called "war crimes" in the Indictment, and the fact that appellant admits that Artukovic is sought as a "war criminal." Perhaps the leading case on the subject is *In re Castioni*, (1891), 1 Q.B. 149. In that case, the following pertinent comments are made:

Denman, J. (page 156).

"I think that in order to bring the case within the words of the Act and to exclude extradition for such an

act as murder, which is one of the extradition offences, it must be shewn that the act is done in furtherance of, done with the intention of assistance, as a sort of overt act in the course of acting in a political matter, a political rising, or a dispute between two parties in the State as to which is to have the government in its hands, before it can be brought within the meaning of the words used in the Act."

Denman, J. (page 159).

"The question really is whether, upon the facts, it is clear that the man was acting as one of a number of persons engaged in acts of violence of a political character with a political object, and as part of the political movement and rising in which he was taking part."

Hawkins, J. (page 165).

"Now what is the meaning of crime of a political character? I have thought over this matter very much indeed, and I have thought whether any definition can be given of the political character of the crime—I mean to say, in language which is satisfactory. I have found none at all, and I can imagine for myself none so satisfactory, and to my mind so complete, as that which I find in a work which I have now before me, and the language of which for the purpose of my present judgment I entirely adopt, and that is the expression of my brother Stephen in his History of the Criminal Law of England in vol. ii, pp. 70, 71. I will not do more than refer to the interpretations, other than those with which he agrees, which have been given upon this expression, 'political character': but I adopt his definition absolutely. 'The third meaning which may be given to the words, and which I take to be the true meaning, is somewhat more complicated than either of those I have described. An act often falls under several different definitions. For instance, if a civil war were to take place, it would be high treason by levying war against the Queen. Every case in which a man was shot in action would be murder. Whenever a house was burnt for military purposes arson would be committed. To take cattle, &c., by requisition would be robbery. According to the common use of language, how-

ever, all such acts would be political offences, because they would be incidents in carrying on a civil war. I think, therefore that the expression in the Extradition Act ought (unless some better interpretation of it can be suggested) to be interpreted to mean that fugitive criminals are not to be surrendered for extradition crimes, if those crimes were incidental to and formed a part of political disturbances. I do not wish to enter into details beforehand on a subject which might at any moment come under judicial consideration.'"

Hawkins, J. (page 167).

"I cannot help thinking that everybody knows there are many acts of a political character done without reason, done against all reason; but at the same time one cannot look too hardly and weigh in golden scales the acts of men hot in their political excitement. We know that in heat and in heated blood men often do things which are against and contrary to reason; but none the less an act of this description may be done for the purpose of furthering and in furtherance of a political rising, even though it is an act which may be deplored and lamented, as even cruel and against all reason, by those who can calmly reflect upon it after the battle is over. For the reasons I have expressed, I am of the opinion that this rule ought to be made absolute, and that the prisoner to be discharged."

The *Castioni* case was recently reconsidered by the English courts (Queen's Bench Division) in *Ex parte Kolczynski*, 1954, 2 Weekly Law Reports 116 (1955); 1 All. E. R. 31. The case involved seven Polish sailors who seized control of a trawler and steered to an English port where they sought asylum. Warrants were issued in Warsaw charging them with extraditable offenses. The English court held that the seamen had proved to the satisfaction of the court that the requests for extradition had in fact been made with a view to trying or punishing

them for an offense of a political character.[6] It was stated in the case:

Cassels, J.

"'The words "offence of a political character" must always be considered according to the circumstances existing at the time when they have to be considered. The present time is very different from 1891, when Castioni's case was decided. * * *"

Lord Goddard, C. J., stated:

"The Court in *Castioni's* case were careful to say that they were not giving an exhaustive definition of the words 'of a "political character."' * * * The evidence about the law prevalent in the Republic of Poland today shows that it is necessary, if only for reasons of humanity, to give a wider and more generous meaning to the words we are now construing, which we can do without in any way encouraging the idea that ordinary crimes which have no political significance will be thereby excused."

American cases[7] have more or less adopted language used in *Castioni*. In the instant case we are dealing with a so-called relative political offense in that a common crime is

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[6] In the *Kolczynski* case, we note that the opinion of Hawkins, J., in *In re Castioni*, 1 Q.B. 149, 163, as to the duties of magistrates was not followed. The opinion apparently stands (although the point is not entirely clear) for the proposition that in England the committing magistrate is to determine whether the requisition for the surrender of the fugitive criminal has *in fact* been made with a view to try to punish him for an offense of a political character. See comment in 18 Modern Law Review 380, (1955, Stevens & Sons Limited, London). Compare discussion of similar problem in American cases of *In re Lincoln*, 228 Fed. 70, 74; *In re Ezeta*, 62 Fed. 972 (E.D. Calif. 1894) and *Laubenheimer* v. *Factor*, C.C.A. 7, 1932, 61 F.2d 626, 628.

[7] *In re Ezeta*, 62 Fed. 972 (N.D. Cal. 1894); *Ornelas* v. *Ruiz* (1896), 161 U.S. 502; *Luis Oteiza y Cortes* v. *Jacobus*, 136 U.S. 330; *United States ex rel. Giletti* v. *Commissioner of Immigration*, 35 F.2d 786.

said to be connected with a political act.[8] Other than the fact that Artukovic is called a "war criminal" by appellant, we note the following facts as showing a marked degree of connection between the alleged murders and a political element. Appellee Artukovic is not charged with personally murdering anyone, rather it is charged that the murders were carried out on his "orders."[9] The Indictment accuses Artukovic "for having, in the course of 1941 and 1942, when Yugoslavia was occupied by German and Italian troops, issued orders based on criminal motives, hatred and the desire for power, to members of bands of which he was one of the leaders, to carry out mass slaughters of the peaceful civilian population of Croatia, Bosnia and Herzegovina. . . ." The Indictment states (in the Explanation of the Indictment) that the "accused Artukovic was the so-called Minister of the Interior in the 'Cabinent' of Ante Pavelic." It is also stated that "Direction and control over the concentration camps, over the internment of people in the camps and over the treatment (Point 8 of the Indictment) was discharged, along with Pavelic, by the accused Artukovic, who was the so-called Minister of the Interior in Pavelic's 'Cabinet' at that time. This has been established through numerous so-called legal and other kinds of orders which were prepared by the accused Artukovic himself, which he issued and signed alone or together with Pavelic. * * *" It is also stated that Artukovic and Pavelic prescribed a "so-called legal order on August 16, 1941, on the 'Ustasha Security Service' which under the 'Legal Order' of November 25,

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[8] See Vol. I *Oppenheim's International Law*, Lauterpacht (7th Ed. 1948) § 334; Garcia-Mora, "The Present Status of Political Offenses in the International Law of Extradition and Asylum," 14 *University of Pittsburgh Law Review* 371; Garcia-Mora, *International Law and Asylum as a Human Right*, Public Affairs Press, 1956, pp. 73-102.

[9] Appellant, in its brief, points out that "participation" in any of the enumerated crimes and offenses is also an extraditable offense if such participation may be punished in the United States as a felony. Article II of the treaty.

1941 controlled concentration camps and passed decisions on deportations to these camps." The Indictment further states that the "crimes committed by the accused Artukovic simultaneously constitute great international crimes forseen by International Law, specifically Law No. X of the Central Council for Germany and by Article 6 of the Statute of the International Military Tribunal . . ." The amended Complaint alleges over 200,000 murders or participations in murders.

The District Court properly took judicial notice of the fact that Ante Pavelic was the Premier of Croatia during World War II, and of the fact that various factions representing different theories of government were struggling for power during this period in Croatia. We conclude that the finding by the District Court that the offenses for which the surrender of Artukovic was sought were offenses of a political character was correct.

We now consider the question whether because the offenses are also called "war crimes" they have lost their character as "political offenses" within the meaning of the treaty. Appellant argues that "war crimes" are crimes for which extradition is to be granted within the meaning of international acts to which the United States is a party. It is argued by recent legal writers that the "barbarity and atrocity of the crimes [crimes against the law of war and crimes against humanity] committed weigh so heavily upon the common crime element that the political act has practically ceased to exist and, therefore, that the extradition of the offender is the only justifiable course of action."[10]

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[10] Garcia-Mora, *International Law and Asylum as a Human Right*, pp. 9-102 and particularly pp. 91-93, commented on in 24 *University of Chicago Law Review* 202 and 55 *Michigan Law Review* 618; 21 *The British Yearbook of International Law* (1944). 59-95, Lauterpacht; Vol. IV *Oppenheim's International Law* (7th Ed. 1952), Lauterpacht, pp. 566-588 and particularly footnote 4, p. 588; Garcia-Mora, "The Present Status of Political Offenses," 14 *University of Pittsburgh Law Review* 371, 394. G.f. Neumann, Neutral States and the Extradition of War Criminals," 45 *American Journal of International Law* 495.

Appellant in essence argues that by virtue of resolutions[11]

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[11] United Nations Resolution of February 13, 1946: (United Nations Yearbook, 1946-47, p. 66)

"THE GENERAL ASSEMBLY:

taking note of the Moscow Declaration of 1 November 1943 by President Roosevelt, Marshal Stalin and Prime Minister Churchill concerning enemy atrocities in the course of the war, and of the declaration by certain allied governments of 13 January and 18 December 1942 concerning the same matter;

taking note of the laws and usages of warfare established by the fourth Hague Convention of 1907;

taking note of the definition of war crimes and crimes against peace and against humanity contained in the Charter of the International Military Tribunal dated 8 August 1945;

believing that certain war criminals continue to evade justice in the territories of certain States;

RECOMMENDS

that Members of the United Nations forthwith take all the necessary measures to cause the arrest of those war criminals who have been responsible for or have taken a consenting part in the above crimes, and to cause them to be sent back to the countries in which their abominable deeds were done, in order that they may be judged and punished according to the laws of those countries;

AND CALLS UPON

the Governments of States which are not members of the United Nations also to take all necessary measures for the apprehension of such criminals in their respective territories with a view to their immediate removal to the countries in which the crimes were committed for the purpose of trial and punishment according to the laws of those countries."

See also Resolution of General Assembly adopted December 15, 1946, as to the screening of displaced persons, refugees, prisoners of war and other persons of similar status, with a view to identifying war criminals, quislings and traitors. (United Nations Yearbook, 1946-47, p. 170)

Resolution of General Assembly, October 31, 1947: (United Nations Yearbook, 1947-48, p. 222)

"*The General Assembly*

Noting what has so far been done in the matter of the surrender and punishment, after due trial, of the war criminals referred to in its resolution adopted on 13 February 1946,

Reaffirms the aforementioned resolution;

Reaffirms also its resolutions on the subject of refugees adopted

taken in 1946 and 1947 by the United Nations General Assembly as to the surrender of alleged war criminals, it is incumbent on this Court to hold that Artukovic is charged with an offense which is extraditable.

We have examined the various United Nations Resolutions and their background and have concluded that they have not sufficient force of law to modify long standing judicial interpretations of similar treaty provisions. Perhaps changes should be made as to such treaties. A well-known authority[12] recently commented on the point as follows:

> "It would appear that codification of offenses against the law of nations should be developed to indicate those offenses with a political aspect which should be excluded from the concept of 'political offense' and made subject to extradition to the country where the offense was committed, or to the jurisdiction of an international criminal tribunal, if such were established. * * * It seems probable, however, that due process of law would be better assured if an international criminal tribunal had jurisdiction of such offenses."

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on 12 February 1946 and on 15 December 1946;

Recommends Members of the United Nations to continue with unabated energy to carry out their responsibilities as regards the surrender and trial of war criminals;

Recommends Members of the United Nations, which desire the surrender of alleged war criminals or traitors (that is to say nationals of any State accused of having violated their national law by treason or active collaboration with the enemy during the war) by other Members in whose jurisdiction they are believed to be, to request such surrender as soon as possible and to support their request with sufficient evidence to establish that a reasonable *prima facie* case exists as to identity and guilt, and

Reasserts that trials of war criminals and traitors, like all other trials should be governed by the principles of justice, law and evidence."

[12] Quincy Wright, Professor Emeritus of International Law, University of Chicago, 24 *University of Chicago Law Review* 202, 206.

Other points raised by the appellant we need not consider based on our decision.

Judgment affirmed.

(Endorsed:) Opinion. Filed June 24, 1957.

Paul P. O'Brien, Clerk.

APPENDIX C

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 15217

BRANKO KARADZOLE, Consul General of the Federal People's Republic of Yugoslavia, and ROBERT W. WARE, United States Marshal, *Appellants*,

vs.

ANDRIJA ARTUKOVIC, *Appellee*.

JUDGMENT

Appeal from the United States District Court for the Southern District of California, Central Division.

This cause came on to be heard on the Transcript of the Record from the United States District Court for the Southern District of California, Central Division, and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the order of the said District Court in this cause be, and hereby is affirmed.

(ENDORSED) Judgment

Filed and Entered: June 24, 1957

PAUL P. O'BRIEN, Clerk

APPENDIX D

Extradition Treaty between the United States and Serbia

Concluded October 25, 1901; ratification advised by Senate January 27, 1902; ratified by President March 7, 1902; ratifications exchanged May 13, 1902; proclaimed May 17, 1902. 32 Stat. 1890.

* * *

ARTICLE I.

The Government of the United States and the Government of Servia mutually agree to deliver up persons who, having been charged with or convicted of any of the crimes and offenses specified in the following article, committed within the jurisdiction of one of the high contracting parties, shall seek an asylum or be found within the territories of the other: Provided, that this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his or her apprehension and commitment for trial if the crime or offense had been committed there.

ARTICLE II.

Extradition shall be granted for the following crimes and offenses:

1. Murder, comprehending assassination, parricide, infanticide, and poisoning; attempt to commit murder; manslaughter, when voluntary.

* * *

Extradition is also to take place for participation in any of the crimes and offenses mentioned in this Treaty, provided such participation may be punished in the United States as felony and in Servia as crime or offense as before specified.

* * *

ARTICLE VI.

A fugitive criminal shall not be surrendered if the offense in respect of which his surrender is demanded be of a political character, or if he proves that the requisition for his surrender has, in fact, been made with a view to try or punish him for an offense of a political character.

No person surrendered by either of the high contracting parties to the other shall be triable or tried, or be punished, for any political crime or offense, or for any act connected therewith, committed previously to his extradition.

If any question shall arise as to whether a case comes within the provisions of this article, the decision of the authorities of the Government on which the demand for surrender is made, or which may have granted the extradition, shall be final.

• • • •

Act of June 25, 1948, c. 645, 62 Stat. 822 (Tit. 18 U.S.C. Sec. 3184):

Whenever there is a treaty or convention for extradition between the United States and any foreign government, any justice or judge of the United States, or any commissioner authorized so to do by a court of the United States, or any judge of a court of record of general jurisdiction of any State, may, upon complaint made under oath, charging any person found within his jurisdiction, with having committed within the jurisdiction of any such foreign government any of the crimes provided for by such treaty or convention, issue his warrant for the apprehension of the person so charged, that he may be brought before such justice, judge, or commissioner, to the end that the evidence of criminality may be heard and considered. If, on such hearing, he deems the evidence sufficient to sustain the charge under the provisions of the proper treaty or convention, he shall certify the same, together with a copy of all the testimony taken before him, to the Secretary of State, that a warrant may

issue upon the requisition of the proper authorities of such foreign government, for the surrender of such person, according to the stipulations of the treaty or convention; and he shall issue his warrant for the commitment of the person so charged to the proper jail, there to remain until such surrender shall be made.

Act of June 25, 1948, c. 646, 62 Stat. 964, as amended May 24, 1949, c. 139, Sec. 112, 63 Stat. 105 (Tit. 28 U.S.C. Sec. 2241):

(a) Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions. • • •

• • •

(c) The writ of habeas corpus shall not extend to a prisoner unless—

(1) He is in custody under or by color of the authority of the United States or is committed for trial before some court thereof; or

(2) He is in custody for an act done or omitted in pursuance of an Act of Congress, or an order, process, judgment or decree of a court or judge of the United States; or

(3) He is in custody in violation of the Constitution or laws or treaties of the United States; • • •

Act of June 25, 1948, c. 646, 62 Stat. 965 (Tit. 28 U.S.C. Sec. 2243):

A court, justice or judge entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.

The writ, or order to show cause shall be directed to the person having custody of the person detained. It shall be returned within three days unless for good

cause additional time, not exceeding twenty days, is allowed.

The person to whom the writ or order is directed shall make a return certifying the true cause of the detention.

When the writ or order is returned a day shall be set for hearing, not more than five days after the return unless for good cause additional time is allowed.

* * *

The court shall summarily hear and determine the facts, and dispose of the matter as law and justice require.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 462

BRANKO KARADZOLE, Consul General of the Federal People's Republic of Yugoslavia,

and

ROBERT W. WARE, United States Marshal,
Petitioners,

v.

ANDRIJA ARTUKOVIC.

PETITIONERS' REPLY TO BRIEF IN OPPOSITION

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PETITIONERS' REPLY TO BRIEF IN OPPOSITION

I.

It is not the petitioners' contention, as respondent asserts (p. 5), that the Executive construction is that under the Treaty some "political" offenses are extraditable while others are not. The Treaty is explicit that no "political" offense is an extraditable offense. But the Treaty leaves "political" offense undefined, and "[t]here is no hard and fast line between a political and an ordinary crime * * *." *Newsletter,* Inf.

Comm. Jur., July, 1957, p. 2. Thus, in Deere, *Political Offenses in the Law and Practice of Extradition*, (1933) 27 Am. J. Int. L. 247, it is pointed out that

> * * * the conventions * * * refer to political offenses without defining the term, so that what would otherwise be a clear-cut statement of policy * * * becomes instead a matter of uncertainty and doubt because of the lack of agreement as to what constitutes a political offense.

The international and Executive construction advanced by petitioners is that "war crimes", at least those offenses described as "Crimes Against Humanity" in Article 6 of the Agreement of August 8, 1945 (Pet. pp. 9, 10), are not "political" offenses. It is irrelevant to argue as respondent does (pp. 17, 18), that "war crimes" may include offenses which are not among those listed by the Treaty as the crimes for which extradition can be had under it, for "murder", the crime here charged, is. The construction, evidenced by United States participation in multilateral international acts in concert with the sovereign parties to a host of diverse extradition treaties, is not that "war crimes" are, as such, extraditable offenses under the Treaty, but that they are not non-extraditable as "political" offenses.

II.

Respondent's reliance on the aftermath of *Ornelas* v. *Ruiz* (pp. 12, 13) is misplaced. The Executive, in the exercise of the ultimate discretion which always rests with it in such matters, refused extradition of one of the three prisoners there involved because *on the weight of the evidence* (which this Court did not consider) it concluded that the murder, arson, kidnapping and rob-

bery laid to him, were committed in the furtherance of an insurrection which he headed, and, hence, that they were "political" offenses. Here, although concededly respondent was a politician and a member of an insurrectionary regime, it does not appear, as petitioners have shown (Pet. pp. 9, 10, 47-56), that the murders charged to respondent were committed in furtherance of the insurrection to which he was a party, or in putting down some other political action to which his victims were parties, and respondent does not contend otherwise.

III.

It is an unfounded assumption that respondent makes (pp. 10, 20-21) when he argues from the premise that the United States sought without success to have included in the Treaty a provision specifically excluding from "political" offenses the murder or attempted murder of a head of government or a member of his family. This type of provision is the so-called *attentat* or *Belgian* clause. Harvard Research in International Law, Pt. 1, *Extradition*, (1935) 29 Am. J. Int. L. Supp. 114, 115; Deere, *op. cit. supra*, at 253. It had its origin not in the assassination of President Garfield in 1881, but in a law enacted by Belgium in 1856,[1] following a decision of a Belgian court that a fugitive charged with an attempt to murder Napoleon III, was a political offender, and, as such, not extraditable to France. I Oppenheimer, *International Law*

[1] Law of March 22, 1856, adding the following to Article 6 of the Law of October 1, 1833: "There shall not be considered as a political crime * * * an attack on the person of the head of a foreign government or the members of his family, when this attack takes the form of either murder, assassination or poisoning". See Harvard Research in International Law, *supra*, at 363.

(8th. ed. 1955) 709; Fenwick, *International Law* (3d ed. 1948) 336; Deere, *op. cit. supra,* at 252, 253. It is therefore not surprising that the first extradition treaty containing such a clause to which the United States was a party, should have been concluded with Belgium. Although the treaty with Belgium and similar ones may have been concluded when "the memory of the assassination of President Garfield was still fresh", IV Moore, *International Law Digest* (1906) 352, that affords no basis for saying, as respondent does (p. 20) that the United States "sponsored" the *attentat* or *Belgian* clause, and (p. 21) in the negotiation of the treaty here involved, was "unsuccessful" in getting it inserted. Respondent refers to no diplomatic correspondence or other authority for this assumption.[2] In any event, in this argument respondent assumes erroneously that "war crimes" are necessarily "political" offenses, and that petitioners contend that the United Nations and Inter-American resolutions evidence a purpose that they nevertheless be extraditable as an exception. But the resolutions and the events leading up to their adoption shows that the family of

[2] Moreover, respondent's argument proves too much. After the assassination of President Lincoln, and long before the *attentat* or *Belgian* clause appeared in any extradition treaty to which the United States was a party, the United States requested several governments, including those of Great Britain, Italy and the Papal States, to surrender his assassin if he should be found in their territories. In every case the request met with a favorable response. Indeed, in 1866, John H. Surratt, who was charged with complicity in the crime was apprehended in Egypt and was taken into American custody with the cooperation of the Egyptian authorities. IV Moore, *op. cit. supra,* at 352, 353.

nations, the United States included, considered such crimes not as "political" offenses to be treated as an exception, but as not being "political" offenses at all. Otherwise, it is reasonable to assume, the War Crimes Commission's or Yugoslavia's proposal for new treaty engagements (Pet. pp. 23, 24) would have been accepted.

IV.

Respondent's argument (pp. 23-26) that the action below is tantamount to a decision by a magistrate on the evidence after hearing, and hence not subject to review except as to jurisdiction, is patently untenable. There was no hearing; there was no evidence. The sole question was the sufficiency of the complaint in extradition. Obviously, whether a pleading is sufficient is a question of law, not of fact, even though in reaching its determination the Court must of necessity consider the factual allegations of the pleading. But that is because the sufficiency or insufficiency of a pleading depends upon the legal significance of the facts it alleges.

Here the Courts below held that the murder of every last woman, child, priest and rabbi alleged in the complaint was, *as a matter of law,* an offense of a "political" character (and, accordingly, that the complaint was insufficient) merely, it would seem, because there were so many of them or because the respondent had assumed a certain style and its trappings—to which none but Hitler and Mussolini and their minions gave any credence. Whether these were sufficient grounds

in law for the holding of the Courts below is not only a reviewable question, but should be reviewed.

Respectfully submitted,

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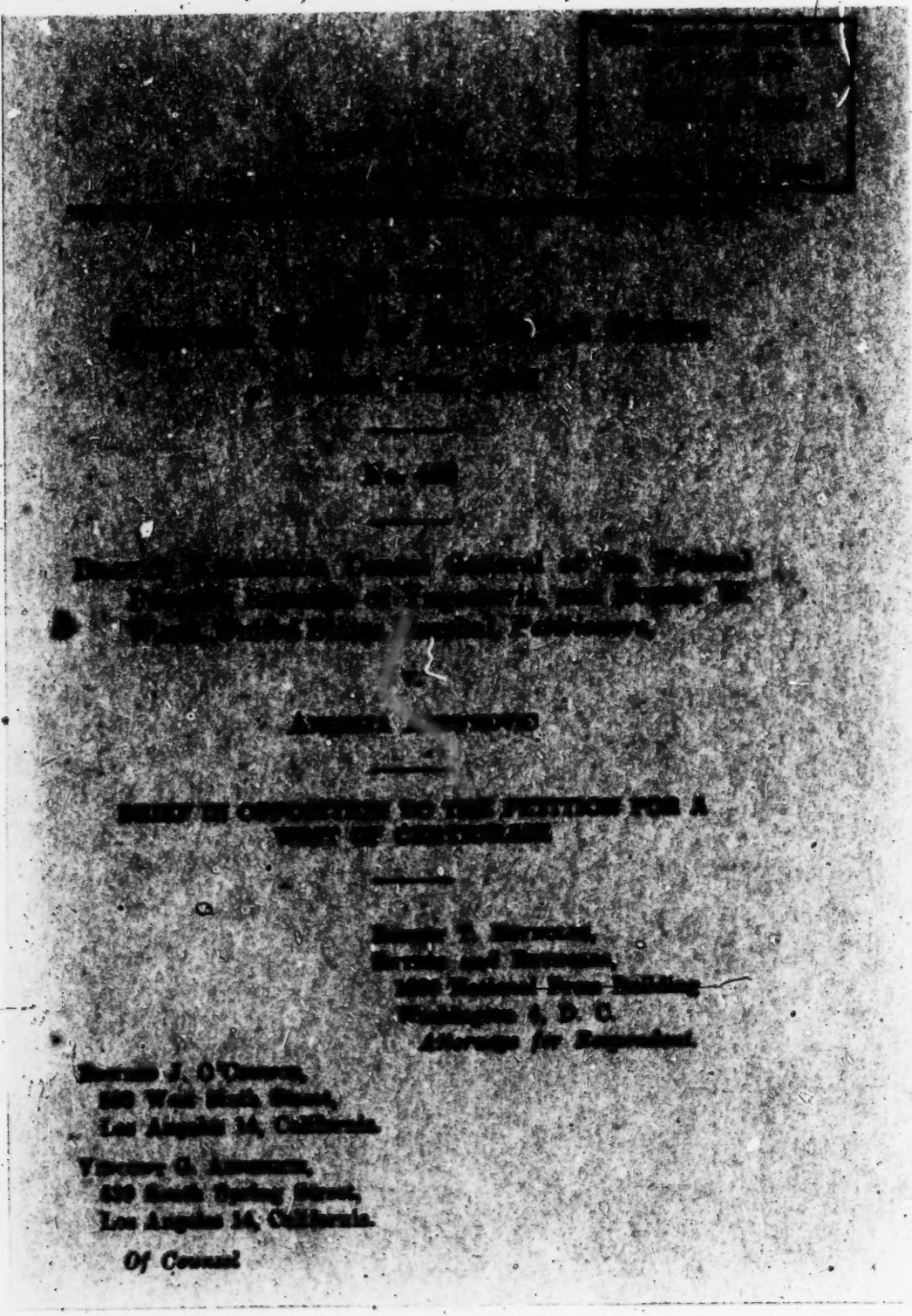

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INDEX

	Page
STATEMENT OF THE CASE	1
SUMMARY OF ARGUMENT	4
REASONS FOR DENYING WRIT	5
I. The Court Below in Considering the Construction of Article VI of This Treaty and Similar Articles of Other Treaties Attributed to the Executive Department, and in Concluding that, Whether or Not Such Attribution Was Properly Made, the Sought-for Construction Was Insufficient to Modify Long Standing Judicial Interpretations Treaties, Ruled on a Question of Federal Law Long Settled by Decisions of This Court	5
II. The Construction of Extradition Treaty Provisions Ascribed to the Executive Department is Erected by Petitioners Upon Circumstances Not Within the Operation of Extradition Treaties; and if Such Construction Was Held by the Executive Department in 1946-47, It Was Not So Held at the Time of Negotiating the Instant Treaty and There Is No Evidence That It Is Presently Held, and Thus It Is Not a Consistent Interpretation or Construction to Which the Courts Need Give Much Weight	15
III. In Accord with Decisions of This Court Upon the Use of Habeas Corpus, the Court Below Decided the Offenses Charged Were of a "Political Character" Upon Basis of Facts Alleged in the Complaint and Supporting Indictment and Attachment, and Upon Facts of Which Judicial Notice Was Taken, Therefore No Federal Question Was Decided In Conflict With a Decision or Decisions of This Court	23
CONCLUSION	26

CASES

	Page
Ex parte Charlton, 185 F. 880 (C.C. D.N.J., 1911) affmd. 229 U.S. 447	7
In re Ezeta, 62 F. 972 (N.D. Cal., 1894)	11
In re Lincoln, 228 F. 70 (E.D.N.Y., 1915) affmd. 241 U.S. 651	11
Ivancevic v. Artukovic, 211 F. 2d 565, cert. denied 348 U.S. 818, rehearing denied 348 U.S. 889	2, 21, 24
Luis Oteiza y Cortes v. Jacobus, 136 U.S. 330	23
Ornelas v. Ruiz, 161 U.S. 502	11, 12, 23, 24, 26
Sullivan v. Kidd, 254 U.S. 433	18
Terlinden v. Ames, 184 U.S. 270	23
The Amiable Isabella, 19 U.S. 1	8
United States v. Rauscher, 119 U.S. 407	6
Valentine v. U. S. ex rel. Neidecker, 299 U.S. 5	7, 9

MISCELLANEOUS

McKinley, Pres. Wm. E., annual message, Dec. 5, 1898	13
Malloy, Treaties, Conventions, International Acts, etc., 1776-1909, Vol. I	7, 8
Malloy, Treaties, Conventions, International Acts, etc., 1776-1909, Vol. II	8
Moore, International Law Digest, Vol. IV	12, 13

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 462

BRANKO KARADZOLE, Consul General of the Federal People's Republic of Yugoslavia, and ROBERT W. WARE, United States Marshal, *Petitioners*,

v.

ANDRIJA ARTUKOVIC

BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

STATEMENT OF THE CASE

This proceeding derives from an extradition complaint filed with the United States Commissioner at Los Angeles by the Consul General of Yugoslavia pursuant to which respondent was taken into custody from which he sought release and dismissal of said complaint by petitioning the United States District Court for the Southern District of California for a writ of habeas corpus. The grounds for seeking such writ were that the said Commissioner had no jurisdiction because the complaint was not based on a valid and existing treaty and, further, that the offenses charged in the said complaint were political in char-

acter and not extraditable under Article VI of such treaty if it was in effect.

The validity and continuing existence of an extradition treaty between the United States and Yugoslavia was affirmatively found in *Ivancevic* v. *Artukovic*, 211 F:2d 565, cert. denied 348 U.S. 818, rehearing denied 348 U.S. 889.

Thereafter the said District Court considered the further ground alleged in the petition for the writ and found that the offenses charged in the complaint were political offenses not extraditable under Article VI of the treaty; thus the said Commissioner was without jurisdiction to consider or examine under the complaint. Upon appeal, the United States Court of Appeals for the Ninth Circuit affirmed unanimously the decision of the said District Court. The appellants below now seek review in this Court by petition for a writ of certiorari.

The record before this Court reflects that the respondent was born in Austria-Hungary in territory later incorporated into the Kingdom of the Serbs, Croats and Slovenes created in 1919 (R. p. 175); that he never by any voluntary act embraced citizenship of Yugoslavia but always considered himself a Croatian (R. p. 179); that the German invasion of Yugoslavia commenced in April 1941, and at the same time the Croats revolted and proclaimed the Independent State of Croatia (R. 180); that Croatia was recognized by Germany, Japan, Finland, Sweden, Hungary, Bulgaria and Rumania (R. 181); that Croatia raised military forces which fought only upon its territory (R. 185); that respondent was a citizen and national of Croatia bearing diplomatic passport issued by such state in

November 1941 (R. 190); that he was successively appointed between April 1941 and May 1945 the Minister of Interior, Minister of Justice, again Minister of Interior, and President of the State Council of the Croat state (R. 181-3); that the offenses alleged to have been committed occurred in 1941-42 (R. 504); that respondent was Minister of Interior in the "Cabinet" of Ante Pavelic during 1941-42 (R. 503); that participation of respondent in the offenses charged is alleged to have occurred through orders given as Minister of Interior in 1941-42 when Yugoslavia was occupied by German and Italian troops (R. 503); that judicial notice was taken of the existence of war involving the Croat State at the time of alleged issuance of such orders by respondent (R. 539); that judicial notice was taken of the fact that the government of Yugoslavia fled the country at the time of the German invasion in 1941 (R. 539); that judicial notice was taken that various factions representing differing political beliefs were struggling for control of Croatia during this period (R. 561); finally the military forces of Soviet Russia and Tito's Partisans overran Croatia in May 1945 and respondent was forced to flee the country (R. 186-7).

It is further a matter of historical fact of which the courts may take notice that during the period 1941-42, and extending well into 1945, the military forces of six states and factions were engaged in strife upon the soil of Croatia and Yugoslavia; to-wit, those of Germany, Italy, Russia, Croatia, and Yugoslavia as represented by the guerilla forces of Mihailovich and Tito.

SUMMARY OF ARGUMENT

The Court below had jurisdiction, examined the offenses charged against respondent, and correctly found them to be "political offenses" upon a background of factual allegations contained within the complaint, indictment and its attachment, and historical facts of which judicial notice was taken.

The Court below gave due consideration to a construction of the "political offenses" articles of extradition treaties ascribed to the Executive Department of the Government and urged as creating an exception to otherwise non-extraditable political offenses, and found such alleged construction insufficient basis to disregard the plain admonition of such treaty articles that extradition shall not be granted for political offenses, and in such decision the Court below followed well-established principles of treaty construction laid down by this Court.

There is no clear and conclusive showing that the Executive Department ever held the treaty construction ascribed to it by petitioners, that the basis of United States actions in United Nations assembly from which such construction was drawn was, in fact, summary military surrender as contrasted with extradition under treaty; and further that if such construction was ever held by the Executive Department, it is of recent date, has not been consistently adhered to, and apparently is not now held.

REASONS FOR DENYING THE WRIT

I.

The Court Below in Considering the Construction of Article VI of This Treaty and Similar Articles of Other Treaties Attributed to the Executive Department, and in Concluding That, Whether or Not Such Attribution Was Properly Made, the Sought-for Construction Was Insufficient to Modify Long Standing Judicial Interpretations of Treaties, Ruled on a Question of Federal Law Long Settled by Decisions of This Court.

Just as in submitting their case to the Court below, the petitioners devote a lengthy portion of their petition to the recitation of resolutions proposed to, discussed, and acted upon by the United Nations in General Assembly in which the United States participated. It appears to be the theory of the petition that by reason of the resolutions offered, supported, opposed and otherwise acted upon by the United States delegation to the United Nations in 1946-47, the Executive Department of the United States must be found to have construed Article VI of this treaty and similar articles of other treaties as permitting the extradition of some persons accused of "political offenses" while prohibiting the extradition of others so charged. It is not quite clear by what standards "political offenses" are to be divided into extraditable and non-extraditable categories, as Article VI provides only for non-extradition, but the construction sought after by petitioners would make extraditable "political offenses" when designated by the demanding government as "war crimes."

Such theory was fully presented to the Court below which considered and discussed the same in its opinion (R. 561-3). Thus petitioners incorrectly urge this Court that the Court below held that "resolutions of international bodies, concurred in by the United States

and having pertinency to the construction and application" of treaty provisions "*are not to be considered* in construing and applying" a provision of a treaty to which the United States is a party (P. 20). What the Court below did was to consider the treaty construction drawn by petitioners from resolutions acted upon by the United Nations and to conclude that the offenses charged having been found "of a political character", there is no room within the plain language of Article VI permitting extradition for a "political offense". What petitioners seek in this Court, apparently, is a ruling that treaty construction ascribed to the Executive Department is binding upon the courts, since it is clear from the opinion of the Court below that after consideration of the alleged executive construction it was rejected as insufficient to modify long standing judicial constructions of treaty provisions.

Petitioners profess to find it "not clear" to what judicial interpretations the Court below had reference in its opinion, but it is fundamental that the construction of treaties is for the courts and, if necessary, to the exclusion of any other construction or interpretation. This is made quite clear by the language of this Court in *United States* v. *Rauscher*, 119 U.S. 407, 30 L.Ed. 425, 7 S.Ct. 234, an extradition case under a treaty between the United States and Great Britain, wherein the Court said, in part (p. 419):

> "The treaty of 1842 being, therefore, the supreme law of the land, of which the courts are bound to take judicial notice, * * *, we proceed to inquire, * * *, into the true construction of the treaty."

And in *Ex parte Charlton,* 185 F. 880 (C.C. D.N.J., 1911) affmd. 229 U.S. 447, 57 L.ed. 257, 33 S.Ct. 945, that Court held:

> "The construction of an extradition treaty, made by the Constitution a part of the supreme law of the land, is for the courts, and they are not bound by the construction placed thereon by the executive or diplomatic branches of the government or by the construction placed thereon by the foreign country with whom the treaty is made."

And in *Valentine* v. *U.S. ex rel. Neidecker,* 299 U.S. 5, 81 L.ed. 5, 57 S. Ct. 100, this Court said:

> "Historical background and administrative practice furnish us no warrant to reading into the treaty with France a grant which the parties failed to insert. * * *."

The jurisdiction of the courts to construe treaty provisions being well-founded and unchallenged, it appears appropriate to set forth for the ready reference of this Court those portions of Article VI of the instant treaty and of comparable articles of other extradition treaties which have been the subject of judicial and executive construction heretofore and to which the alleged construction of the Executive Department is presently sought to be applied.

In the treaty of 1861 with Mexico[1], it is agreed that—

> "The provisions of the present treaty shall not be applied in any manner to any crime or offence of a purely political character, * * *."

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[1] Malloy, Treaties, Conventions, Internat'l Acts, etc., Vol. I.

In the treaty of 1870 with Salvador,[2] it is stated that—

> "The provisions of this treaty shall not apply to any crime or offence of a political character, * * * ."

In the treaties of 1882 with Belgium[1], of 1887 with the Netherlands,[2] of 1903 with Guatemala,[1] and of 1906 with San Marino,[2] the pertinent article reads—

> "The provisions of this convention shall not be applicable to persons guilty of any political crime or offense or of one connected with such an offense."

The most frequently used language appears in the treaties of 1901 with Servia[2] (the controlling treaty herein), of 1889 with Great Britain[1], of 1893 with Sweden[2] and with Norway,[2] of 1900 with Bolivia[1] and Chile,[1] and of 1902 with Denmark,[1] among others, and reads—

> "A fugitive criminal shall not be surrendered if the offense in respect of which his surrender is demanded be of a political character, * * * ."

A second fundamental principle of construction adhered to by this court is that where the meaning of the treaty provision is clear and unambiguous, there is no need for interpretation and nothing will be added to the treaty provision. Thus, in interpreting a treaty with Spain this Court long ago said wisely and prudently in *The Amiable Isabella*, 19 U.S. 1, 5 L.ed. 191, 6 Wheat. 1, (1821):

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[1] Malloy, Treaties, Conventions, Internat'l Acts, etc., Vol. I.

[2] Malloy, Treaties, Conventions, Internat'l Acts, etc., Vol. II.

(at p. 70)

"* * * There is no room here left for interpretation, on account of ambiguous language of the parties. They have expressed themselves in the clearest manner, * * *

(at p. 71)

"In the first place, this court does not possess any treaty-making power. That power belongs by the constitution to another department of the government; and to alter, amend, or add to any treaty, by inserting any clause, whether small or great, important or trivial, would be on our part an usurpation of power and not an exercise of judicial functions. It would be to make, and not to construe a treaty. * * * ."

Just as emphatically, and more recently, in interpreting an extradition treaty with France, this Court said in *Valentine* v. *U. S. ex rel. Neidecker, supra* (1936), Mr. Chief Justice Hughes speaking for the Court:

(at p. 11)

"* * * Examining the treaty in that aspect, it is our duty to interpret it according to its terms. These must be fairly construed, but we cannot add to or detract from them."

(at p. 13)

"Historical background and administrative practice furnish us no warrant to reading into the treaty with France a grant which the parties failed to insert. * * * ."

(at p. 18)

"However regrettable such a lack of authority may be, the remedy lies with the Congress, or with

> the treaty-making power wherever the parties are willing to provide for the surrender of citizens and not with the courts."

Language more applicable to the attempt of petitioners to have the courts read into the provisions of Article VI of the controlling treaty, and comparable articles of other extradition treaties, an exception which the parties thereto did not provide, can scarcely be found. As will be set forth more fully to this Court in a later discussion of treaty construction ascribed herein to the Executive Department (*infra*, pp. 20-21), the United States, in negotiating the very treaty before this Court, did apparently seek to insert into Article VI a specific exception to non-extraditable political offenses, but Servia (the Yugoslav party to this treaty) seemingly was unwilling to accept an exception to the non-extraditability of "political offenses".

Because the admonition in extradition treaties is so clear that extradition is prohibited where the offense charged is found to be of a political character, there has been little challenge of this principle in the courts of the United States and the constructions of this article of extradition treaties by the courts have usually been upon the questions whether the court had jurisdiction to determine whether the offense charged was "of a political character", and whether a precise definition of a "political offense" or an "offense of a political character" can be prudently made.

That the courts of the United States have found themselves possessed of jurisdiction to determine whether an offense is one of political character is well established by the opinions of the examining courts

in the cases of *In re Ezeta*, 62 F. 972 (ND. Cal., 1894), *In re Lincoln*, 228 F. 70 (E.D.N.Y. 1915) affmd. 241 U.S. 651, and of this Court in *Ornelas* v. *Ruiz*, 161 U.S. 502, 40 L.ed. 787, 16 S.Ct. 689 (1896), where, in reversing the District Court for substituting its judgment for that of the United States Commissioner upon the issue whether the offenses were political in nature, this Court unmistakably approved the exercise of "authority of decision" by the Commissioner in determining offenses were of a purely political character.

The court deciding *In re Ezeta*, supra, provided in its opinion (p. 997 ff.) a careful examination of various definitions of an offense of political character, any of which would cover the circumstances of the instant case.

Upon the question whether the magnitude or number of crimes charged in extradition provides an exception to non-extradition where the offenses are of political character, the court in *In re Ezeta*, supra, had this to say, which is particularly pertinent since several hangings, shootings and robberies were charged to the respondents therein (p. 997-8):

> "* * * My duty will have been performed when I shall have determined the character of the crimes or offenses charged against these defendants. During its progress, crimes may have been committed by the contending forces of the most atrocious and inhuman character, and still the perpetrators of such crimes escape punishment as fugitives beyond the reach of extradition. I have no authority, in this examination, to determine what acts are within the rules of civilized warfare, and what are not. War, at best is barbarous, and hence it is said that "the law is silent during war."

Perhaps the most serious challenge to the treaty provision that extradition is prohibited for offenses or crimes having a political character arose out of the differing executive constructions given by the governments of the United States and Mexico to Article VI of the extradition treaty of 1861 between those countries, reading in part—

> **"The provisions of the present treaty shall not be applied in any manner to any crime or offence of a purely political character. * * * "**

The case, which provided the forum for the differing executive constructions of the above provision was *Ornelas* v. *Ruiz*, *supra*, and an exceptionally illuminating, but lengthy, discussion and summary of executive action following this Court's decision therein is to be found in Moore's International Law Digest, Vol. IV, pp. 336-351. Briefly, after this Court's decision in 1896 the Mexican Government asked for the surrender of the three respondents in that case—Ruiz, Duque and Guerra. As the latter had temporarily escaped, only the first two could be surrendered, and they were. Upon the recapture of Guerra, the Mexican Government asked in 1897 for his surrender. But the then United States Secretary of State (Mr. Sherman) refused, holding the evidence showed the expedition of which Guerra was a member to have been revolutionary in origin and purpose, and thus his offense was of a political character. The Mexican Government protested this construction, arguing that the word "purely" in the treaty provision quoted above permitted a breakdown of "political offenses" into extraditable and non-extraditable categories, and pointing to the non-appearance of this word "purely"

in other treaties to which the United States is a party (it is lacking in the treaty before this Court). The Executive Department of the United States finally rejected the Mexican protest, and perhaps the following excerpt from the language of President McKinley, in his annual message, Dec. 5, 1898, For. Rel. 1898, quoted in Moore's International Law Digest, Vol. IV, pp. 349-50, best expresses the executive construction of such treaty provision:

> "'The interpretation of certain provisions of the extradition convention of December 11, 1861, has been at various times the occasion of controversy with the Government of Mexico. An acute difference arose in the case of the Mexican demand for the delivery of Jesus Guerra, who, having led a marrauding expedition near the border with the proclaimed purpose of initiating an insurrection against President Diaz, escaped into Texas. Extradition was refused on the ground that the alleged offense was political in its character and therefore came within the treaty proviso of nonsurrender. The Mexican contention was that the exception only related to purely political offenses, and that as Guerra's acts were admixed with the common crimes of murder, arson, kidnapping and robbery the option of nondelivery became void, a position which this Government was unable to admit in view of the received international doctrine and practice in the matter.'"

This long-standing executive construction of the nonextraditable provision of that treaty is squarely in point with the instant case, as the theory of the petition herein is that the "political character" of the offenses charged is wiped out by the allegation that such offenses also constitute "war crimes". In other

words, petitioners urge that the admixture of "political offenses" and "war crimes" results in an extraditable offense though no exception to non-extradition for "political offenses" is provided in the treaty. It should be noted that despite the use of the word, "purely", in the treaty with Mexico, political offenses admixed with crimes like murder, arson, kidnapping and robbery were held non-extraditable, whereas in the language of Article VI of the treaty before this Court the word, "purely", is not present. The non-extraditable character of political offenses and exceptions proposed thereto in treaty negotiation by the United States will be treated later in this brief in discussion of the actuality and consistency of treaty construction ascribed to the Executive Department by petitioners.

It is submitted that the foregoing judicial and executive precedents amply illustrate the "long standing judicial interpretations" referred to by the Court below in its conclusion that the alleged executive construction of "political offense" articles of extradition treaties extracted by petitioners from various United Nations resolutions and actions, even if correct, had not sufficient force of law to modify such long standing judicial interpretations.

II.

The Construction of Extradition Treaty Provisions Ascribed to the Executive Department Is Erected by Petitioners Upon Circumstances Not Within the Operation of Extradition Treaties; and if Such Construction Was Held by the Executive Department in 1946-47, It Was Not so Held at the Time of Negotiating the Instant Treaty and There Is No Evidence That It Is Presently Held, and Thus It Is Not a Consistent Interpretation or Construction to Which the Courts Need Give Much Weight.

Contrasted to the unambiguous language of extradition treaties providing for the surrender of persons charged with crimes detailed specifically in the treaties, and providing that extradition shall not occur when the offense is of a political character, the resolutions, debate and actions of the United Nations in General Assembly will be scanned vainly for unambiguous language stating that such resolutions and actions are intended to construe the provisions of treaties to which the United States became a party in many cases more than fifty years ago.

Petitioners point out that the United States representative was present and participated in the discussions concerning the extradition and or surrender of "war criminals", and make much of the fact that in such participation he did not indicate that only summary military action and not extradition of war criminals was involved, or that "war criminals" might be considered "political offenders" under treaties to which the United States is a party (P. 29). Quite helpfully, petitioners provide this Court with excerpts from the discussion of the United States delegate, and the following quotation therefrom appears (P. 33):

> "We have surrendered to Yugoslavia, Poland, Czechoslovakia, the Soviet Union, Belgium, and

> the United Kingdom, in the aggregate, many hundreds of persons desired by them for trial. * * *"

As this statement was made in rebuttal of a charge by Yugoslavia that the United States, among others, had failed "to carry out their obligations with respect to war criminals and quislings" (P. 32), there can be no doubt that the surrender of "many hundreds of persons desired by them for trial" referred to "war criminals and quislings."

Now if "many hundreds of persons" were surrendered in accordance with extradition treaties to which the United States is, or was, a party, the court records of the United States would be filled with examples of the application of treaty provisions under the construction insisted upon by petitioners. But respondent has not been able to locate a single record in the United States courts of the extradition or surrender under treaty of one "war criminal" or "quisling" of the "many hundreds of persons" so surrendered. Why not? Because so far as can be determined all of those "hundreds of persons" were "surrendered" summarily by our military forces and commanders in the occupation zones of Germany and Austria. No wonder the United States delegate did not mention that summary military action was involved in such "surrender"; it was a fact well known to all of those before whom he spoke. No wonder also he did not mention that "war criminals" might be considered "political offenders" under our treaties, for in summary military surrender of prisoners or others within military jurisdiction there is no need even to show the existence of an extradition treaty.

much less its provisions. This Court may be certain that had the extradition of one of the "hundreds" of "war criminals" or "quislings" been accomplished in accord with extradition treaties and statutes of the United States, thus bearing out the construction of Article VI and comparable articles of other treaties attributed by petitioners to the Executive Department of the United States Government, the petition herein would have contained numerous references thereto, instead of setting forth a fanciful theory of executive construction of treaty provisions based upon assumptions, inferences, deductions, underlying premises, etc., drawn from resolutions before the United Nations in General Assembly.

As the actual surrender of persons charged with "war crimes" was carried out by summary military action without apparent regard to treaties, it was totally unnecessary that the United States delegate attempt to interpret extradition treaties of the United States in relation thereto.

Further showing the inapplicability of "war crimes" under extradition treaties of the United States is the partial definition of "war crimes" provided at the foot of page 10 of the Petition. Among the offenses defined as "war crimes" are murder, extermination, enslavement, deportation, persecution on political, religious or racial grounds, whether or not in violation of the domestic law of the country where perpetrated. The extradition treaty before this Court, and others involving the United States, specify a dozen or more crimes for which "extradition shall be granted". But "deportation" and "persecution" are not found among such specified crimes, and the

instant treaty would not permit extradition by Yugoslavia for "enslavement". As petitioners assume that the United States delegate to the United Nations was well aware that "political offenses" are not extraditable under treaty, it would not be too much to assume that such delegate was aware that only crimes specified in the treaty are extraditable. As "hundreds of persons" were surrendered as "war criminals," it cannot be doubted that among them were those charged with the "war crimes" of deportation, persecution or enslavement, not extraditable under our extradition treaties. How, then, can it be possibly assumed that the United States delegate had in mind, in discussing the surrender of "war criminals" for crimes not even specified in extradition treaties, that his actions would some day be interpreted as construing the provisions of such treaties?

Such definition of "war crimes" provides also that the act charged need not be in violation of the domestic law of the country where perpetrated. As this is so palpably inconsistent with the basic principles of extradition treaty negotiations, there is little need to repeat that in view of the wide differences between surrender of "war criminals" and extradition under treaty the United States delegate could scarcely have dreamed that his actions would be one day viewed as construing extradition treaty provisions.

The petitioners admit that the construction of extradition treaty provisions herein ascribed to the Executive Department "has not been of long duration." (P. 38). But they rely upon *Sullivan* v. *Kidd*, 254 U.S. 433, 65 L. ed. 344, 41 S. Ct. 158, as providing the rule that executive construction of a treaty should be given much weight, overlooking that such deci-

sion required that such executive construction be "consistently adhered to by the Executive Department of the Government."

Hereinbefore (*supra*, p. 13), it has been shown that in 1897 the executive construction of an extradition treaty provision similar to Article VI here under consideration, i.e., Article VI of the Treaty with Mexico of 1861, would not permit extradition for "political offenses" even though admixed with "murder, arson, kidnapping and robbery," all crimes clearly specified as extraditable in the Mexican and instant treaties. This executive construction occurred *only four years before* the negotiation in 1901 of the treaty before this Court, and there is no evidence that such executive construction was changed in those four years. In fact it is admitted by petitioners that the construction for which they strive had its inception in 1944 at the earliest (P. 38). Long before that year the United States had concluded with most of the countries of the world extradition treaties which are still in effect, and which were seemingly negotiated upon the construction dating at least from 1897 that "political offenses" despite admixture with crimes of "murder, arson, kidnapping and robbery" were not extraditable. How then can it be successfully urged that "political offenses" admixed with alleged murder, arson, kidnapping, and robbery are now made extraditable because designated as "war crimes" by the demanding government? Particularly this must be untenable when the term "war crimes" was not defined at the time of negotiating such extradition treaties.

However, there is further evidence of which this Court may take notice that the traditional executive

construction of Article VI and similar articles of other extradition treaties has been that "political offenses" are not extraditable, no matter how heinous, unless specifically provided for in the treaty.

In 1881 the regrettable assassination of President James A. Garfield occurred in this city. Thereafter, the United States in negotiating extradition treaties between 1882-1909 with Belgium, Luxemburg, Russia, Denmark, Guatamala, Cuba, Haiti, Portugal, Honduras and Salvador, sponsored the insertion in the "political offenses" article of one of the following or similar provisions:

> "An attempt against the life of the head of a foreign government, or against that of any member of his family when such attempt comprises the act either of murder or assassination, or of poisoning, shall not be considered a political offense or an act connected with such an offense." (Treaty with Belgium, 1882)
>
> "When the offense charged comprises the act either of murder or assassination or of poisoning, either consummated or attempted, the fact that the offence was committed or attempted against the life of the Sovereign or Head of a foreign state or against the life of any member of his family, shall not be deemed sufficient to sustain that such a crime or offence was of political character, or was an act connected with crimes or offences of a political character." (Treaty with Portugal, 1908).

As this exception appeared in no extradition treaties to which the United States was a party prior to 1882, it is apparent that the executive construction of the "political offenses" article was that its non-extraditable character was all-embracing, even to the partic-

ularly abhorrent crime of murder of the President of the United States or a member of his family, and that the proper and correct manner of relieving certain "political offenses" of their non-extraditability was by specific exception in negotiating treaties.

It is interesting to note that during approximately the same period the United States also negotiated extradition treaties with Argentina, Bolivia, Chile, Colombia, Japan, Mexico, Norway, Netherlands, Nicaragua, Panama, Peru, France, Switzerland, Uruguay and Servia (the Yugoslav party to the treaty herein) but was unsuccessful in moving insertion in such treaties of this specific exception to the non-extraditability of "political offenses". While this Court is not in position to determine treaty construction by the foreign parties to the treaties of the United States, it would certainly appear therefrom that these States, many now members of the United Nations, held the view that non-extraditable "political offenses" should not be reduced even to the extent of the specific exception sought by the United States.

Finally, the construction of the "political offenses" article of extradition treaties ascribed to the Executive Department of the Government by petitioners is further shown to be inconsistent and uncertain by the very fact that the Executive Department has not seen fit to reenter this proceeding as amicus curiae in support of the construction ascribed to it. Petitioners try vainly to explain away this lack of support by quoting from the statement of the Executive Department in *Ivancevic* v. *Artukovic*, *supra*, that it would not be concerned with this case. But this is not the first time that the Executive Department has made

this statement. On May 21, 1951, it informed the Yugoslav Government that—

> "it was without authority to act in the matter until it shall have received from the extradition magistrate a transcript of the proceedings in the hearing required by Title 18, U.S.C., Section 3184." (Note of State Department to the Yugoslav Ambassador, R. 82).

Thereafter, the existence of the treaty with Yugoslavia being challenged, the Executive Department entered as amicus curiae. In the present phase of the proceedings, the construction of an article of most of the extradition treaties to which the United States is a party has been raised, and it is at least uncertain whether the construction ascribed to the Executive Department was ever held by it, much less that it has been consistently held or is presently held. Thus the fact that the Executive Department has not again entered as amicus curiae should have consideration in determining whether the construction sought by petitioners was ever held by that Department and whether it has been consistently, or is presently, held.

It is submitted that the sought-for construction of the "political offenses" article of extradition treaties to which the United States is a party is untenable as erected upon circumstances and occurrences not within the operation of such treaties, and furthermore if such a construction was held by the State Department at any time, it was inconsistent with constructions shown to have been previously held, and apparently is not now held.

III.

In Accord With Decisions of This Court Upon the Use of Habeas Corpus, the Court Below Decided the Offenses Charged Were of a "Political Character" Upon Basis of Facts Alleged in the Complaint and Supporting Indictment and Attachment, and Upon Facts of Which Judicial Notice Was Taken. Therefore, No Federal Question Was Decided in Conflict With a Decision or Decisions of This Court.

The record before this Court shows that the decision of the Court below holding that the offenses charged in the extradition complaint were "of a political character", and thus not extraditable, was taken upon an application for a writ of habeas corpus. It is respectfully submitted that the proper questions arising therefrom are whether (1) the Court below had authority to decide whether the offenses so charged were "of a political character", and (2) if so, whether the said Court had before it "legal evidence" upon which it could exercise judgment.

It appears to be undisputed by petitioners that the writ of habeas corpus may properly be used to determine if the examining magistrate or commissioner in extradition proceedings has jurisdiction of the subject-matter and the accused, and if the offenses charged are extraditable under a valid treaty. *Ornelas* v. *Ruiz, supra; Luis Oteiza y Cortes* v. *Jacobus,* 136 U.S. 330, 34 L. ed. 464, 10 S. Ct. 1031. And it may be so used before examination by the said magistrate or commissioner occurs. *Terlinden* v. *Ames,* 184 U.S. 270, 46 L. ed. 534, 22 S. Ct. 484. This latter use is entirely proper since there would be no need for examination if the magistrate or commissioner with whom the complaint is lodged lacks jurisdiction of the subject-matter

or the accused or because there is no treaty or the complaint does not charge an extraditable offense.

As the jurisdiction of the commissioner over the subject matter and the accused has never been disputed, and as the validity of the treaty was settled affirmatively in *Ivancevic* v. *Artukovic, supra,* there remained only for the Court below the determination whether the complaint charges an extraditable offense. The basis for such determination is necessarily limited to the fact allegations found in the complaint as filed, in this case including the foreign indictment and prosecutor's explanation attached thereto, and facts of which judicial notice may properly be taken. As this Court said in *Terlinden* v. *Ames, supra* (p. 279) "On the face of the complaint extraditable offences were charged to have been committed * * *." Equally so, it might be found that offenses charged in the complaint were not extraditable.

Petitioners appear to be urging that the rule of this Court in *Ornelas* v. *Ruiz, supra,* is violated by the decision of the Court below. But, as pertinent to the instant case, the holding of this Court in *Ornelas* v. *Ruiz, supra,* appears to be two-fold, (1) that providing the Commissioner had before him "any legal or competent evidence of facts", he possessed "authority of decision", and (2) that his judgment upon such basis could not be reviewed by another court by use of the writ of habeas corpus.

Accordingly it appears clearly from the decisions of this Court that the Court below had "authority of decision", and the only question remaining is whether the Court below exercised such jurisdiction upon basis of "any legal or competent evidence before it."

As to the determination of what is a "political offense" or one "of a political character," this Court held, also in *Ornelas* v. *Ruiz, supra*, (p. 509), that the commission of an extraditable crime is "a question of mixed law and fact, but chiefly of fact, and the judgment of the magistrate rendered in good faith on legal evidence * * * cannot be reviewed on the weight of evidence, * * *."

A careful study of the decision of the District Court below, and the affirmation thereof by the Circuit Court below, reveals that both were made upon basis of factual allegations gleaned from the complaint, indictment and attachment and of facts of which judicial notice was taken. Both Courts carefully quoted the factual allegations appearing in the complaint, indictment and attachment, and carefully set forth the facts of which judicial notice was taken (R. 554-5, 560-1), and it appears pointless to restate such findings herein. But petitioners, admitting in the heading of number III of their "Reasons for Granting Writ" (P. 47) that such was the basis of the decision of the Court below, urge in reasoning following such heading that the "The Court below, however, held that *as a matter of law* the murders of men, women and children, etc." were offenses of a political character (P. 48), and conclude, inconsistently with their premise, that "It would thus appear clear that the decision of the Court below, in holding that the alleged crimes are, *as a matter of law*, offenses of a 'political character' etc." conflicts with applicable decision of this Court (P. 56).

It is submitted that the entire reasoning of petitioners under number III of the "Reasons for Grant-

ing the Writ" (P. 47-56) is an attempt to question the judgment of the District Court below, affirmed by the Circuit Court below, made in good faith upon basis of factual allegations in the complaint, indictment, etc., and facts within judicial notice, and to distort such judgment made upon legal evidence as being one made "as a matter of law."

It is therefore further submitted that the rule of *Ornelas* v. *Ruiz, supra,* holding that the judgment of the examining magistrate or commissioner, having jurisdiction and having before him legal evidence, should not be reviewed upon the weight of the evidence, may be properly applied to the judgment of the Court below, it having jurisdiction and having before it legal evidence.

Thus it would appear that the decision of the Court below holding that the offenses of which respondent is accused are, as a matter of fact, of a political character and not extraditable, is not in conflict, but rather is in accord, with decisions of this Court, and the writ ought not to be granted upon such ground.

CONCLUSION

There has been no important question of Federal law presented by this case which has not been long since settled by decision of this Court. The Court below has merely applied the decisions of this Court holding that treaty construction is for the courts, if necessary, to the exclusion of such construction ascribed to the Exective Department of the Government, and also holding that where the language of a treaty provision is unambiguous, the courts have no power to add to or detract from such language.

Nor was the decision of the Court below that the offenses charged were "of a political character" in conflict with a decision or decisions of this Court, but under rules laid down by this Court in several decisions the Court below accepted jurisdiction to make an initial determination of the political character of offenses charged, and made such determination upon basis of competent or legal evidence.

Accordingly it is respectfully submitted that the petition for a writ of certiorari herein be denied.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 462

BRANKO KARADZOLE, CONSUL GENERAL OF THE FEDERAL PEOPLE'S REPUBLIC OF YUGOSLAVIA, AND ROBERT W. WARE, UNITED STATES MARSHAL, PETITIONERS

v.

ANDRIJA ARTUKOVIC

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

On November 18, 1957, the Solicitor General was advised by the Court of the pendency of the petition for a writ of certiorari in this case and invited to express the views of the Government. Because of the character of the issues presented, the views of the Department of State were requested. These are set forth in the annexed memorandum (Appendix, *infra,* pp. 6–10), and represent the position of the Government.

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In brief, it is our position that the cause should have been allowed to proceed to hearing under 18 U. S. C. 3184, which provides as follows:

> Whenever there is a treaty or convention for extradition between the United States and any foreign government, any justice or judge of the United States, or any commissioner authorized so to do by a court of the United States, or any judge of a court of record of general jurisdiction of any State, may, upon complaint made under oath, charging any person found within his jurisdiction, with having committed within the jurisdiction of any such foreign government any of the crimes provided for by such treaty or convention, issue his warrant for the apprehension of the person so charged, that he may be brought before such justice, judge, or commissioner, to the end that the evidence of criminality may be heard and considered. If, on such hearing, he deems the evidence sufficient to sustain the charge under the provisions of the proper treaty or convention, he shall certify the same, together with a copy of all the testimony taken before him, to the Secretary of State, that a warrant may issue upon the requisition of the proper authorities of such foreign government, for the surrender of such person, according to the stipulations of the treaty or convention; and he shall issue his warrant for the commitment of the person so charged to the proper jail, there to remain until such surrender shall be made.

This hearing has not yet been held. In 1951, the Consul General of the Republic of Yugoslavia filed

with the United States Commissioner at Los Angeles a formal request that an order issue for the extradition of respondent on the ground that he had been charged with murder in Yugoslavia (R. 405–463). Annexed to the complaint as amended was a copy of the indictment returned against respondent in Yugoslavia (R. 463–503), including an explanation thereof by the Yugoslav County Public Prosecutor (R. 503–522). Respondent was taken into the custody of the United States Marshal under a warrant issued by the Commissioner under 18 U. S. C. 3184. Before a hearing under Section 3184, respondent filed a petition for a writ of habeas corpus in the United States District Court for the Southern District of California challenging the legality of his detention on the ground that there was no extradition treaty in effect between the United States and Yugoslavia and that the extradition complaint sought the return of respondent on the basis of political offenses which were not the subject of extradition (R. 22–24). The District Court ordered respondent's release on the ground that the extradition treaty of 1902 between the United States and Serbia was no longer in effect (*Artukovic* v. *Boyle*, 107 F. Supp. 11), but this was reversed on appeal. *Ivancevic* v. *Artukovic*, 211 F. 2d 565 (C. A. 9), certiorari denied, 348 U. S. 818. Thereafter, further hearings were held on the second ground alleged in the petition for habeas corpus, *i. e.*, that the extradition of respondent was sought on the basis of political offenses which were not the subject of extra-

dition under the treaty with Serbia, Article VI of which provided in pertinent part as follows:

> A fugitive criminal shall not be surrendered if the offense in respect of which his surrender is demanded be of a political character, or if he proves that the requisition for his surrender has, in fact, been made with a view to try or punish him for an offense of a political character.

The District Court noted that the cause came before it prior to any hearing by a committing magistrate and that its function was not that of a committing magistrate under 18 U. S. C. 3184. It ruled that, for this reason, it could not consider that section of the treaty which provides that one shall not be surrendered "if he proves that the requisition for his surrender has, in fact, been made with a view to try or punish him for an offense of a political character" (Pet. App. 1a–2a). The court considered the case as "confined to the limited and narrow question as to whether or not the Complaint states an extraditable offense under the treaty" (Pet. App. 1a). On the basis of the extradition complaint and the indictment and certain facts of which the court took judicial notice as to the political situation in Yugoslavia at the time of the offenses alleged, the District Court ruled that all the offenses charged, without differentiation, were of a political character and therefore not subject to extradition under Article VI of the treaty (Pet. App. 1a–4a; 140 F. Supp. 245). Accordingly, it again ordered the release of respondent. The Court of Appeals af-

firmed the order of the District Court, similarly holding that all the offenses charged were of a political character (Pet. App. B, 4a–17a; 247 F. 2d 198).

As appears from the annexed memorandum (App., *infra*, p. 8), the Department of State "is of the opinion that no valid reason exists for not allowing an extradition hearing to take place in this case," since, on the basis of the matters thus far adduced, the Department of State "cannot reach the conclusion that all of the acts alleged by the Yugoslav Government to have been committed by Artukovic are necessarily of a 'political character', as the words 'political character' are used in Article VI of the Extradition Treaty in effect between the United States and Yugoslavia." It is therefore the view of the Government that the petition for a writ of certiorari should be granted and the cause remanded to the District Court with directions to discharge the writ of habeas corpus and remand respondent to the custody of the United States Marshal, so that a hearing can be held under 18 U. S. C. 3184, *supra*, p. 2. At that hearing, evidence may be adduced to afford a basis for determining pertinent issues under the treaty and laws of the United States, including evidence from which it may be determined whether or not all of the acts alleged to have been committed by respondent constitute crimes of a political character.

Respectfully submitted.

J. LEE RANKIN,
Solicitor General.

JANUARY 1958.

APPENDIX

DEPARTMENT OF STATE
WASHINGTON, *December 11, 1957.*

MEMORANDUM FOR THE SUPREME COURT

VIEWS OF THE DEPARTMENT OF STATE

Subject: *Branko Karadzole, Consul General of the Federal People's Republic of Yugoslavia, and Robert W. Ware, United States Marshal,* v. *Andrija Artukovic.*

The Department of State has been advised by the Department of Justice of the pendency on petition for a writ of certiorari of the above entitled cause. The Department of Justice has asked the Department of State whether it desires to submit views concerning the case.

The Department of State understands that there has not yet been an extradition hearing "to the end that the evidence of criminality may be heard and considered", as provided in 18 U. S. Code, Section 3184, and that the issues considered thus far have been raised in Habeas Corpus proceedings. By 18 U. S. Code, Section 3184, it is provided:

> Whenever there is a treaty or convention for extradition between the United States and any foreign government, any justice or judge of the United States, or any commissioner authorized so to do by a court of the United States, or any judge of a court of record of general jurisdiction of any State, may, upon complaint made under oath, charging any person found within his jurisdiction, with having

committed within the jurisdiction of any such foreign government any of the crimes provided for by such treaty or convention, issue his warrant for the apprehension of the person so charged, that he may be brought before such justice, judge, or commissioner, to the end that the evidence of criminality may be heard and considered. If, on such hearing, he deems the evidence sufficient to sustain the charge under the provisions of the proper treaty or convention, he shall certify the same, together with a copy of all the testimony taken before him, to the Secretary of State, that a warrant may issue upon the requisition of the proper authorities of such foreign government, for the surrender of such person, according to the stipulations of the treaty or convention; and he shall issue his warrant for the commitment of the person so charged to the proper jail, there to remain until such surrender shall be made. (June 25, 1948, ch. 645, § 1, 62 Stat. 822.)

The United States District Court for the Southern District of California, in *Artukovic* v. *Boyle,* set forth at page 537 of the transcript of the record, and the United States Court of Appeals for the Ninth Circuit, in *Karadzole* v. *Artukovic,* affirming *Artukovic* v. *Boyle,* set forth at page 552 of the transcript of the record, have held that Artukovic should be released and that no extradition hearing should be held on the ground that the offenses alleged by the Yugoslav Government to have been committed by Artukovic were all, without differentiation, of a "political character", as the words "political character" are used in Article VI of the Extradition Treaty in effect between the United States and Yugoslavia (32 Stat. 1890).

After giving careful consideration to the amended extradition complaint and the indictment, to the

opinions of the District Court and Circuit Court of Appeals and to petitioner's brief supporting the petition for a writ of certiorari, the brief in opposition to the petition for a writ of certiorari, and the petitioner's reply to the brief in opposition, the Department of State is of the opinion that no valid reason exists for not allowing an extradition hearing to take place in this case, as provided in 18 U. S. Code, Section 3184, since, on the basis of the above-listed documents and the materials contained therein, the Department of State cannot reach the conclusion that all of the acts alleged by the Yugoslav Government to have been committed by Artukovic are necessarily of a "political character", as the words "political character" are used in Article VI of the Extradition Treaty in effect between the United States and Yugoslavia.

The Department of State is of the view that the offense of murder, even though committed solely or predominantly with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, is none the less "murder" within the meaning of the Extradition Treaty here involved, and is not thereby rendered an offense of a "political character" within the meaning of Article VI of the above-mentioned treaty. It appears from an examination of the complaint and the indictment that it is possible that some of the offenses therein alleged to have been committed by Artukovic may have been committed solely or predominantly with such intent. It is true that the Court of Appeals said: "The District Court properly took judicial notice of the fact that * * * various factions representing different theories of government were struggling for power during this period in Croatia." Without purporting wholly to define offenses of a "political character", it may be stated that murder

directly related to a struggle for power might well be an offense of a "political character". Even if the fact of which the District Court took judicial notice be correct, it does not appear on the face of the pleadings that all of the offenses which Artukovic is therein alleged to have committed were necessarily connected with such struggle for power.

There is also a suggestion in the indictment that the acts of the defendant constituted "war crimes". Even though this might be so, it is the opinion of the Department that some of the murders alleged to have been committed might constitute "murder" within the terms of the Extradition Treaty here involved, under the circumstances alleged, particularly in the absence of any suggestion of tactical or strategic considerations motivating each of the alleged crimes.

In making this statement the Department of State does not intend thereby to indicate whether the Secretary of State would or would not deliver Artukovic to an authorized agent of the Yugoslav Government, pursuant to 18 U. S. Code, Section 3186, if there were to be an extradition hearing and if the Extradition Magistrate were to certify the record to the Secretary of State, as provided in 18 U. S. Code, Section 3184.

The Department of State would like to make known its understanding that, if there were to be an extradition hearing in the case, the following would almost certainly be some, but not necessarily all, of the additional issues to be considered by the Extradition Magistrate or subsequently by the Secretary of State, or by both:

(1) Whether or not sufficient and adequate evidence under the treaty and the laws of the United States has been adduced by the Yugoslav Government to establish the commission of any of the crimes alleged and Artukovic's connection therewith; and

(2) Whether or not the requisition for Artukovic's surrender has, in fact, been made with a view to try or punish him for an offense of a political character. (It is intended to distinguish this issue from the issue of whether or not a particular offense in respect of which Artukovic's surrender is demanded be of a political character.)

The Department of State, therefore, is of the view that a writ of certiorari should be granted and that the Supreme Court should reverse the decision of the lower courts so that:

(1) An extradition hearing in accordance with the provisions of 18 U. S. Code, Section 3184, may take place;

(2) Evidence may be adduced at such hearing which may afford a basis for determining whether or not all of the acts alleged to have been committed by Artukovic constitute crimes of a "political character"; and

(3) Any other pertinent issues under the treaty and laws of the United States may be considered.

For the Secretary of State:

(Signed) Loftus Becker,
(Typed) LOFTUS BECKER,
The Legal Adviser.